THE COURT-KEEPER'S GUIDE

For the keeping of

Courts-Læt and Courts-Baron:

Wherein is largely and plainly opened. The Jurisdiction of these Courts, with The Learning of *Manors*, *Copyholds*, *Rents*, *Herriots*, and other Services and Advantages belonging unto *Manors*; shewing the Lord's due and the Tenant's duty.

Usefull for all persons concerned in

COPYHOLD ESTATES.

The Seventh Edition.

By *WILLIAM SHEPPARD*, Esq;

Whereunto are added

Precedents of Copies

OF

COURT-ROLLS,

With other Additions, by *Will. Browne.*

LONDON,
Printed by the assigns of *Rich. Atkins*, and *Edw. Atkins*, Esquires, for *William Birch*, and *Gabriel Collins*. 1685.

TO THE READER.

I Conceive it would be eſteemed an unneceſſary and fruitleſs Preſumption to ſay any thing in the Praiſe of this Treatiſe, more than, that it is the Compoſition of the no leſs Judicious than Laborious *Sheppard*; and that it hath hitherto been ſo well received and eſteemed by the Profeſſors of the Law, that it hath already paſſed the Sixth Edition; and that notwithſtanding the ſeveral *Errata's* it hath gathered formerly, by the want of care or skill of the Correctors it hath met with. Which Eſteem (next to the great Ability of the Authour) I am perſuaded the Book hath acquired by the Accurateneſs of its

Brevity, which renders it more portable, and consequently less troublesome, than any work of this nature. And now in this Seventh Edition (Reader) the matter is so well contrived to thy Benefit, that the most excellent Additions, both for variety and use, here inserted, do not swell the Book, either to trouble the Pocket, or disoblige the Purse: Which makes me in some measure confident, that thou wilt not reject the Endeavours in this last Impression of

Yours, &c.

W. B.

THE

THE
Court-Keeper's
GUIDE.

CHAP. I.

What a Court is; And the ſeveral kinds of Courts.

A Court (in a Law-ſenſe) is taken for the place where juſtice is judicially adminiſtred. And ſo it is either ſpiritual; *i.e.* for ſpiritual cauſes and matters: or civil; *i.e.* for civil cauſes and matters. The civil Courts are again, either of Record, as the Parliament, the Court called the King's-bench, the Leet or Law-day; and many others. Or not of Record, as the County Court, Hundred Court, and Court Baron. *Co. Inſt. 1 part, f.* 58. 260. 117.

Court what.

The kinds of Courts.

We ſhall ſpeak onely of the Leet, and Court Baron; and firſt we ſhall

ſay ſomewhat of them both together, and then we ſhall ſpeak of them aſunder.

CHAP. II.

Of a Leet and Court Baron together.

THeſe Courts agree in ſome things, as in this, 1. They are both the Kingdoms Courts. 2. They may be kept at any place within the precinct of the Court. 3. They were both originally granted by the King. 4. They were both inſtituted for the more ſpeedy adminiſtration of juſtice. But in more things they differ. For, 1. The Court Baron may be kept once every three weeks, or (as ſome think) oftner, if it pleaſe the Lord. But a Court Leet is not kept above twice a year. 2. Court Barons did originally belong to inferiour Lords of Manors; but Court Leets did originally belong to the King. 3. The Court Baron is incident to every Manor; ſo that every Lord of a Manor may keep a Court Baron, but few have Leets; for inferiour Lords of Manors

cannot

cannot keep Leets without a ſpecial Preſcription, or a ſpecial Patent for them. 4. In the Court Baron the Suitors are Judges, but in the Leet the Steward is Judge. 5. In the Court Baron the Jury may be of leſs than twelve, but in the Court Leet never; for in a Court Leet ſtrangers may be impanelled of the Jury, but not ſo in the Court Baron. 6. A Court Baron cannot continue without two Suitors *ad minimum*, but a Court Leet may continue without any Suitors. 7. The Court Baron doth not enquire of any offence againſt the State; But the Leet doth enquire of all offences under High-treaſon, and of ſome High-treaſons alſo; but as Felonies: *Co. of Copiholds, fo. 60, 61. H. 7. 4.*

Judge.

Jury.

Now we ſhall ſpeak of them aſunder. And firſt of a Leet.

CHAP. III.

Of the Leet.

Leet.

THE Leet (called alſo a Law-day, and a view of Frank-pledge) is an ancient Court of Record, inſtituted for-

What.

for reformation of publick Offences or Crown-matters within the precinct thereof, after the example of the Sheriff's turn. For the Leet is derived out of the Sheriff's turn, and is holden before the Steward as Judge; who hath (except in some few things) the same power for the compass and reach of its jurisdiction, which the Sheriff hath in his turn for the whole County. And therefore after the grant of this derivative Leet, the Sheriff in his turn is not to meddle within the reach of this Leet, unless it be in case of the neglect of this Leet; and that not then neither (as it seems) without a special writ: and unless it be in case where the Leet is forfeit into the King's hands. And if the Sheriff doe otherwise, he is a trespasser: And if the Sheriff warn any man that doth live under the precinct of another Leet, to appear at his Court, the party may be discharged by a special writ. This Court at first was doubtless by the King's grant, but at this day it is and may be claimed by prescription. *Finches* law 246. *Co.* 2 *part of Inst. f.* 72. *Co.* 4 *part, ch.* 54. *F. N. B.* 160.

Judge. The nature and original of it.

Co. 4 Inst. 261. saith, of the Stat. of 28 Ed. 3. cap. 9. extends not to such writs upon such omission.

CHAP.

CHAP. IV.

Of the place wherein the Leet is to be kept.

THE Leet may be kept in any place within the Hundred, Pariſh or Manor of which it is: as if it be a Leet for a Hundred it may be kept in any part of the Hundred. If it be a Leet for a Pariſh or Manor, it may be kept in any place within the Pariſh or Manor. In this therefore it doth differ from the Sheriff's turn, which is to be kept in the accuſtomed place, otherwiſe the Sheriff may be puniſhed for it by indictment. *Mag. Charta, ch. 35. Dyer 151. 8 H. 7. 1. 4. Co. of Copyhold, fol. 60. Powell of a Court Leet, f. 22, 23. Co. upon Mag. Charta, f. 72.*

CHAP. V.

Of the time when the Leet muſt be kept.

THIS Court is obtained by grant, or preſcription; if it be gotten by grant it muſt be kept according to the grant. Otherwiſe it is by preſcription, for a Leet may be kept at any time of the year, if it hath been uſed time out of mind ſo to be kept. And the Lord of this Court is not as the Sheriff is for his turn, bound to keep it twice a year (*viz.*) within a month of *Eaſter*, and within a month of *Michaelmas*. For one may preſcribe to keep his Leet once or twice a year at any time of the year upon reaſonable warning given, and if he can by uſage prove it to be ſo kept, it is good enough. But if the Leet hath been uſed to be kept but twice a year, and at a day certain, or within a month of *Michaelmas* and *Eaſter*, and was never known to be kept at any other time, then it muſt be kept at that time, and cannot be kept at any other time. And if it be kept at any other time, all the Acts of the Court are *Coram non judice* and

and void. *Co. ſuper Lit.* 115. *of Copiholds, f.* 60. 71. *Co.* 2 *part of Inſt. f.* 72. 38 *H.* 6. 7. *Dyer* 233. *Fowell of a Court Leet, f.* 21, 22, *&c.*

CHAP. VI.

The perſons that are bound to doe ſuit to this Court Leet.

ALL perſons of mankind from 12 years old to 60. except religious perſons, Barons, Earls, Tenants in ancient demeſne, and ſuch as have Hundreds of their own, that dwell within the precinct of other Leets, are bound to doe ſuit in this Court. For every man muſt be within ſome Leet, and no preſcription will exempt a man from it. If therefore a man be under no particular Leet he ſhall be under the Sheriff's turn. But if a man dwell within the precinct of another Leet, and have Lands onely within my Leet, I may not compell him to doe ſervice to my Leet. And yet if he dwell ſometimes in one place, and ſometimes in another, and one of theſe places is within my Leet, where he dwells at the time my Leet,

Where he ſhall be ſaid to be commorant where nor, vid. Co. 2 Inſt. 122.

is held; in this caſe, and at this time, he muſt doe ſervice at my Leet, for he may doe ſuit at both places at ſeveral times. And any ſtranger in caſe of want of Jurors may be made to ſerve of the Jury. And not onely Tenants that hold of the Manor wherein the Leet is, but others that live there; and not onely thoſe that are Reſiants, but others may be puniſhed there, if they there offend, and can be there met withall. *Marlb. chap.* 10. 12 *H.* 7. 13. *F. N. B.* 160. *old book of Entries* 390. *Powell of a Court Leet, f.* 20, 21, 22.

CHAP. VII.

Of the Juriſdiction and power of the Leet, and the Steward thereof. And what offences may be enquired of and puniſhed in this Court.

1. In making a Jury. Fine.

THE Steward in this Court may compell any man that doth live within the precinct of, and doth owe ſuit to the Leet to ſerve in the Jury. And in caſe of want of a ſufficient number, he may compell any ſtranger to ſerve of the Jury; and if he refuſe, fine him for his

his contempt, 7 *H.* 6. 12. And in ſome ſpecial caſes he may impanell a ſecond Jury to enquire of the concealments of the firſt, and fine them for their offence. 33 *H.* 8. 6. 1 *Eliz.* 17.

2. In puniſhment of a contempt. Fine.

The Steward of this Court may fine any man for a contempt in the face of the Court; as if a man refuſe to be ſworn of the Jury, or being ſworn to preſent what he hath evidence for, or depart without giving of his verdict. Or if one being duly choſen an Officer, and being preſent in Court, refuſeth to be ſworn, or if an affray be made in the preſence of the Court, or a Tithingman refuſe to preſent, or a Bailiff refuſe to return a pannel; in all theſe, and the like caſes, the Steward of himſelf may impoſe a reaſonable * fine on the Offender, and this fine is not afferable nor traverſable. But the Steward cannot at this day † commit to priſon any man for his contempt, nor can he now take a Recognizance, or bind any man to the good behaviour, as heretofore he might have done, and as the Sheriff in his turn may doe. And yet *Co. in 4 part of his Inſt. f.* 262. holdeth that he may take a Recognizance for the peace,

* Note, the fine muſt be ſeveral, and if the Offenders be amerced jointly for joint offences, it muſt be ſeverally aſſered, 8. Rep. Greiſly's caſe, 11. Rep. Godfrey's caſe.

† Impriſonment.

Recognizance.

7 *H.* 6.

7 H. 6. 12. Co. 8. 36. 11. 44. Dyer 211. 233. 11 H. 6. 7. Powell of a Leet. f. 32, 33. 10 H. 6. 8.

3. In making of Officers, and giving of Oaths.

In this Court the Steward might and ought to have given the oath of Allegiance, when it was in uſe: they have power in this Court to make and ſwear Conſtables, Tithing-men, Haywards, and ſuch like Officers, *Co. 4 part of his Inſt. f. 264.*

4. In the things wherein he hath Conuſance.

Amongſt the things whereof the Steward of a Leet hath Conuſance, and wherewith the Jury is to be charged, ſome are ſuch things as may be there enquired of, but cannot be there puniſhed; but they are to be tranſmitted to the Juſtices of the Gaol-delivery, or Juſtices of the Peace. And other things are not onely there to be enquired of, but there to be puniſhed alſo. And theſe are ſome of them, offences at the Common-law, and other offences by certain Acts of Parliament, by which power is given to this Court therein, *27 H. 8. 2.*

Offences by the Common-law.

Felonies.

The things which are here onely to be enquired of, and not to be puniſhed, are all felonies which were ſo by the Common-law, though now they be made,

made Treaſon, as of ſuch as are enemies to the King; falſify or abuſe the King's Coyn or Seal: So all kind of wilfull burners of Houſes, or Barns adjoining thereunto by night, or ſtacks of Corn; robbers of Churches and Chapels; takers of Doves out of Dove-houſes, or young Pigeons, or Hawks out of their Neſts in the night, or Fiſhes out of Ponds, Stews, or Trunks in the night; ſtealers of tame Deer, marked Swans or Peacocks; breakers of Priſon by Felons, reſcuers of Felons, or the like; and their Acceſſories before and after the felony done: of all theſe the Jury muſt make preſentment. And this preſentment is to be tranſmitted to ſuperior Courts to be proceeded upon. *Cromp. Jur.* 212. 22 *Ed.* 4. 22. 19 *H.* 6. 47. 5 *H.* 4. 5. 11 *H.* 7. 1. 14 *H.* 8. 18.

This Court cannot meddle with any offence againſt a Statute-law, except the Statute give it power ſo to do, 8 *H.* 7. 1. 21 *Ed.* 4. 21. And yet if it were an offence before againſt the Common-law, that doth ſtill remain. The things whereof this Court hath perfect Conuſance, and that may be enquired of, and puniſhed here in this Court, are 1. by com-

Common-law, 2. by Statute-law. The Offenders and offences by Common-law are these.

For the Lord's profit Suit of Court.

1. The defaults of Officers and Suiters in doing their suit to this Court. As if any living within the precinct of the Law-day, be not returned of the Decennary, or being returned do not appear; or if any above twelve years of age had lived within the Leet, and had not taken the Oath of Allegiance, he was to have been presented here. And if any such person had come to the Court, the Steward ought to have given him this Oath. *If any Customs or profits due to the Lord of the Leet, be withheld from him, and by whom.* As if any treasure, trove, waif, or estray, or wreck, be kept from him: Or if any claim any royal Franchise, or levy any new Franchise, or abuse any old Franchise within the Leet. *Old book of Entries*, 507. 404. *Stat.* 18 *Ed.* 2. 45 *Ed.* 3. 27. *Crompt. Jur.* 213. of all that are convict, or fly for felony or are outlawed in any Action, *Powell of Courts* 160, 161. See the Charge.

Oath of Allegiance.

Customs.

Waif and estray, &c. Franchises.

Common Nusances.

2. All common and popular Nusances or grievances done to the King's Subjects, by purpresture made in any Land, Wood,

Wood, or Water; by Walls, Hedges, Ditches, or Houſes made up or broken down: by ſtraitening, turning, ſtopping, ſurrounding, or otherwiſe hurting the Common-ways, Bridges, or Waters: by poiſoning or corrupting the Air, by the laying of any Carrion or filth, ſetting up of Houſes of Office, or the like: or by the ſelling of corrupt and unwholſome proviſion: or by the breaking of the due Aſſiſe of Bread, Beer, *&c.* by * Cottages, and † Inmates; by not ſcouring Ditches, or not repairing Highways, and Bridges, and the like. And for all theſe the offender (be he one man or a whole Pariſh) may be amerced, and the Jury may order the reforming of them under a pain. But for private or particular Nuſances to perſons or places, this Court hath not to doe with them. Stat. 18 *Ed.* 2. 29 *Ed.* 3. 29. 2 *Ed.* 6. 10. 1 *Jac. ch.* 19. *Co.* 4. *part of the Inſt. f.* 72. *Dyer* 13. *old Book of Entries*, 390. 550. See the Charge.

* 10 l. the building, 40 s. a month the continuance.

† 10 s. a month, Amercement.

3. All great affraies, outcries, and bloudſheds, and ſuch like popular treſpaſſes, which are treſpaſſes by the Common-law. But not any particular treſpaſs to one man, as beating him, or the like,

Notorious treſpaſſes and breaches of the peace.

like, unleſs bloudſhed follow; nor to one Pariſh; as eating up, or incloſing their common, or the like; nor any treſpaſs puniſhable by a Statute, unleſs the Statute give Conuſance thereof to this Court. *Old Book of Entries*, 300, *Co.* 9. 113. *Dyer* 234. 13. *Bro.* and *Fitz. Leet and Turn.* See the Charge.

Riots, Routs, and unlawfull Aſſemblies at the Common-law are puniſhable in this Court. And for this the Offenders are to be amerced according to diſcretion: this muſt be reaſonable, and the reaſonableneſs triable and avoidable by plea or judgment of the Court in which the ſuit depends, 11 *Rep.* 446. *Powell of Leets*, 166.

Evil members, or perſons of ill behaviour.

4. Evil members, and perſons of ill behaviour that are dangerous to their Neighbours, as Malefactors in Parks, ſuch as take Doves by Engines, ſuch as are common ſuſpected Thieves, or that are the common meſſengers of Thieves, the common Drunkards, the common haunters of Alehowſes or Taverns, not having whereon to live, Night-walkers, and Day-ſleepers, that live idlely, have no Eſtate and yet fare well, Eveſdroppers, common Hedge-breakers, com-

mon

mon Peace-breakers, Raylers and ſowers of diſcord between Neighbours, keepers or haunters of Baudy-houſes, common Scolds, common Barretors, common Uſurers, Innkeepers, who do commonly entertain Thieves and ſuſpicious perſons, knowing or ſuſpecting them to be ſo, and ſuch as do remove bounds or Land-marks between Pariſhes, Hundreds or Counties; but not ſuch as remove bounds between perſons onely. All theſe the Steward of this Court heretofore might have bound to the Peace or good Behaviour, but at this day he can onely, by the preſentment of the Jury, amerce them, or make way to have them bound to their good Behaviour by a Juſtice of Peace, 18 *Ed.* 2. *Bro.* Leet throughout. 2 *par. of his Inſt. f.* 73. 27 *H.* 8. 17. 4 *H.* 7. 1. *Hob. rep. pl.* 311. See Charge.

5. Conſtables, Tything-men, Hay-wards, Alecunners, Bayliffs and ſuch like Officers which are choſen and ſworn in this Court, if any ſuch being choſen refuſe the office and to take the oath, or accepting doth not execute his office duely, or misbehave himſelf therein, as if Conſtables and Tything-men do not take care of watch and ward, keeping the Officers.

the peace, raiſe hue and cry, and purſue it for the apprehending felons, when any felony is done, or raiſe hue and cry when none is done; or do not puniſh Rogues, and the like. Or Tything-men, Chief-pledges, Surveyours of Highways, Searchers and Sealers of Leather, and ſuch like Officers as doe not their duty. 23 *Ed.* 1. 4. 22 *Jac.* 5. 14 *Eliz.* 5. 1 *Jac.* 9. See the Charge. *Kytch.* 12.

Diſturbers of juſtice.

6. All that reſcue perſons or things taken in a courſe of law; as reſcuers of Perſons arreſted, or Goods or Cattel diſtrained, Pound-breakers, and the like. See the Charge.

Neglect of inſtruments of juſtice.

7. Lack of Stocks, Pillory and Tumbrell, Ducking-ſtool, Common-pound. *Old Book of Entries*, 390. 495. *Powell of a Leet* 156. See the Charge.

Offences in trading: Deceit.

8. All that uſe deceit in buying and ſelling, that ſell falſe Wares for good, eſpecially if it be that which is to be eaten or drunk; that ſell by falſe weights and meaſures, Inn-keepers, Victuallers, Bakers, Brewers, Fiſhers, Poulterers, or Fiſhmongers, that ſell that which is unwholſome for food, or ſell at unreaſonable prices; Bakers and Brewers, that do not keep the Aſſiſe of Bread and Beer, and

and Millers that take exceſſive toll, 2 *Ed.* 6. 15. 21 *Jac.* 21. 14 *H.* 8. 12. 1 *Jac.* 22. 5 *Eliz.* 8 *H.* 6. 5. 27 *Ed.* 3. 10. *Hob. Rep. pl.* 163. 13 *Ed.* 3. 6. 13 *R.* 2. 11. *Co.* 2. *part of Inſt. f.* 72. 4 *Ed.* 5. 31. *Stat.* 6 *H.* 5. 8. *Old Book of Entries*, 390. See the Charge.

Foreſtallers, Regrators, and Ingroſſers (it ſeems) may be puniſhed in this Court by the Common-law. And Uſurers, as enemies to trading. *Powell of a Leet* 101, 102. But in theſe and ſuch like caſes the penalty of the Statute cannot be impoſed, for Stewards have no power by the Statute, but it is puniſhed here as an offence at the Common-law before the Statute, which doth remain ſtill; and for theſe the Offender is to be amerced. *Powell of Leets.*

But this Court cannot take Indictments of any felony for the death of a man, or in any other caſe where it hath not Conuſance; And if it do ſo, it is void, and it ſeems the Judge may be puniſhed for it. So neither can it take a Preſentment of an offence done againſt a Pariſh, or againſt a Man.

And therefore a Preſentment in this Court for levying of gate, To the Com-

mon nuſance of the Inhabitants of *Dale*, for oppreſſion in a Common, for beating a man, breaking a hedge, or the like; is void, and all the proceeding thereupon unwarrantable; and *Coram non Judice*. *Co.* 9. 114. 4 *H.* 6. 10. 22 *Ed.* 4. 22. 23 *H.*8.8.41. *Aſſ.pl.*30. The like is of all Preſentments of any thing out of the Juriſdiction or precinct of the Court.

The offences and offender puniſhable in this Court by the Statute-laws are Tanners, Curriers, Shoomakers, Searchers, Sealers, by 1 *Jac.* 22. Such as offend about Fiſh, by 1 *Eliz.*17. 3 *Car.* 4. about Malt, by 2 *Ed.* 6.10. 27 *Eliz.*14 about Archery, by 33 *H.* 8. 9. about Guns, by 33 *H.*8. 6. 14 *H.*8.11. about unlawfull Games, by 33 *H.* 8. 9. about Artificers and Labourers, by 2 *Ed.*6.15. 24 *H.*8.12. about Muſters, by 4 *&* 5 *Ph. & M.*3. about High-ways, by 29 *El.* 5. 2 *&* 3 *Ph. & M.* 8. 5 *Eliz.* 13. about Horſes, by 32 *H.* 8. 13. about Hoſtlers and Victuallers, by 31 *H.* 8. 14. 41. 21 *Jac.*21. about the price of Wine, by part of 1 *Jac.* 25. 7 *Ed.*6.5. about Pheaſants and Partridges, by 23 *Eliz.* 10. about tracers of Hares, by 14 *H.* 8. 10. about hunting in Corn, by 23 *Eliz.*10. about

bout Cottages and Inmates, by 31 *El.* 7. about drinking and drunkenneſs by 1 *Jac.* 10. 5 *Jac.* 5. 21 *Jac.* 7. about watering of Hemp where Cattel drink, by 33 *H.* 8. 17. about Rogues, by 14 *El.* about Crows, by part of 24 *H.* 8. 10. 8 *El.* 15. about Horſes, 32 *H.* 8. 13. And of all theſe and ſome others, this Court may enquire by authority of theſe Acts of Parliament. See the charge afterwards, *Co.* 2 *part of his Inſt.* 263.

The Articles to be enquired of by the Leet, by 18 *Ed.* 2. were inquirable therein by the Common-law.

The Jury in this Court may make By-laws, and enquire of the breach of them as they have been uſed to do. And for Cawſeys, High-ways and Bridges, the greater part may bind the reſt without conſent, 44 *Ed.* 3. 19. See chap. 39.

CHAP. VIII.

The manner and order of proceeding in the Leet.

THE manner and order of the proceeding in this Court, is ſomewhat after the order of proceeding in

the Sheriff's Turn, out of which it was derived. The Steward after he hath called the Court, doth ſwear and charge the Jury; the which muſt conſiſt of twelve at the leaſt, and twelve will ſerve: *Old book of Entries* 392.

Jury.

And if it be a Leet for a whole Hundred, it is fit to make ſome of the Jury of all parts of the Hundred: And if the cuſtome of the place be to make two or more Juries, or one grand Jury and divers petit Juries, it is good to obſerve it. And the Conſtables, and ſuch like Officers, muſt be charged alſo upon oath, and muſt preſent either to the grand Jury, and they muſt make it part of their Preſentment, or elſe the Officers muſt preſent alone; but the firſt is the better way. (And if twelve agree where the Jury doth conſiſt of more, it is good enough, 11 *Car. B. R.*) but the Steward muſt ſee that the Preſentment be good. And for this,

Officers.

Preſentment.

1. That it be in Latine, for otherwiſe ſome ſay it is not good: but howſoever the Steward muſt turn it into Latine e'er it be pleadable, or given in evidence.

2. That it ſay, within the Juriſdiction of this Court.

3. That

3. That it be certain, for if the Preſentment be thus, that *J. S.* did turn ſuch a Water-courſe, or ſtop ſuch a Way, and doth not ſay when nor where, this is void.

4. If it be of a Nuſance, it muſt ſay, To the common Nuſance of the People.

5. That it be made of ſuch things whereof the Leet hath conuſance, otherwiſe it is not good.

6. If the Preſentment be of a Felony, it ſeems it muſt be put under the hands and ſeals of the Jurors; and by writing indented of two parts, one whereof is to be under the Steward's hand; and this muſt remain with the Jury; and the other is to be under the hands of the Jurors delivered to the Steward, and by him to be tranſmitted to the Juſtices of the Peace at the next quarter Seſſions, to the end that the party may be there tried thereupon. But for other matters preſented by the Jury, the Steward is to proceed upon them: For * a Preſentment in a Leet onely made by the grand Jury, is ſaid to be as Goſpel, and no Traverſe lieth to it, but in ſome ſpecial caſe, as when it doth concern freehold: as if *J. S.* be

* *Fitzh.* there ſaith, that *Britton's* opinion was contrary, that every Preſentment both in Leet and turn was traverſable. Traverſe.

preſented that he by reaſon of Tenure is bound to repair ſuch a Way or Bridge; or when the Preſentment is for not amending a Way which is out of the Juriſdiction of the Court. And in theſe caſes alſo he cannot put in a traverſe after the firſt day. But no traverſe lieth to the preſentment of a bloudſhed, or the like, *Dyer* 13. And upon this preſentment of offences, and no certain penalty impoſed by the Jury: and ſo likewiſe for default of appearance, and other faults done in the Court, for which no certain amercement is impoſed, the Steward doth amerce, and then it muſt be aſſered; (that is) by oath of ſome men ſworn to that purpoſe it muſt be ſet down the certain ſum which the Offender ſhall pay; and this may be done either by the Jury it ſelf for all ſuch offences, as are within their preſentment: Or it may be by two or three of the Jury or others made Afferours, ſworn to that purpoſe, according to the cuſtome of the Court; ſee the Oath afterwards. But the Steward himſelf cannot doe it; and yet there needs no affering in theſe following caſes.

Amercement. Theſe defaults are uſually preſented by the Jury.

Afferement.

1. When the Steward himſelf ſets a fine

fine in certain upon a man for any offence done in face of the Court.

2. When the offence is done by an Officer of the Court out of Court, and presented by the Jury, and the Steward imposeth the fine.

3. When there is an Order made upon a certain penalty, (whereof all the Resiants are to take notice at their peril, 11 *Car.* by *Jones & Berkly*) and the Order is broken and presented to be broken, and the penalty forfeit. Notice.

4. When the Jury doth present a man for an offence done, and amerce him a certain sum for it.

5. Where the mulct in certain is appointed and set by any Statute for that offence, for in this case no other sum or punishment can be imposed. And in all these cases when the Fine or amercement is made certain, the Steward is to extreat it, (that is) to make out Scedules and Copies of the Offenders names, the offence done, and the sums imposed upon them, with his Warrant annexed to the Bailiff; (or if it be an offence against a Statute, to that Officer the Statute directeth to levy it.) And the Bailiff may by this, levy it to the Extreats.

Lord's uſe. And for this fine or amerce-
Debt. ment at Common-law, the Lord may either bring an action of debt, or diſtrain a reaſonable part of the Goods,
Diſtreſs. and Cattel diſtrainable of the Offender himſelf (but not of another) in any place in the High-way, or elſewhere; and in owner or another man's cuſtody within the precinct of the Leet (but not elſewhere;) and either ſell them or put them in pound at his choice; and if the Party offer the money, the Lord muſt accept it, 3 *H.* 7. 4. 21 *H.* 7. 40. 2 *H.* 4. 24. 7 *H.* 6. 12. 5 *H.* 7. 3. *Stat.* 13 *Ed.* 1. 13. *Crompt. Jur.* 212. *Bro. Leet through.* preſentment, 1. 5. 2. 7 *H.* 8. 2. *Hob. rep. pl.* 163. 47 *Ed.* 3. 12. *Co.* 8. 40. 11. 14. *Old Book of Entr.* 390. 550. 507. 495. *Powell of Leets, f.* 33, 34. *&c. Co.* 8. 38. 11. 32.

The manner of keeping this Court, wherein this point is more largely opened, followeth.

CHAP. IX.

The manner of keeping a Court Leet.

FIrſt a Warrant muſt be ſent to give notice of the Court. And it is good to give notice enough, ſix days or more be-

before the time; but if it be leſs time it is ſufficient in Law.

This notice muſt be given by the Stewards warrant after this manner.

W. S. Gentleman Steward of the Hundred [or Manor] of *S.* To the Bailiff of the ſame Hundred [or Manor] greeting. You are hereby required to warn the Leet to be kept for your Hundred [or Manor] [or Leet and Court Baron to be kept for the Hundred of *S.* and Manor of *A.*] the firſt day of *April*, *&c.* by 9 of the Clock in the forenoon of the ſame day, at the uſual place there, [or at the now Dwelling-houſe of, *&c.* as the caſe is.]

Given under my hand, &c.

W. S. Steward.

The ſtyle of the Court is to be entred thus, if it be for a Hundred.

The Court-hundred of Slaughter. *Hundred' de Slaughter.*

ſſ. *Cur' Vis' Franc' pleg' de Slaughter tent' apud B. coram* W. S. *gen' Seneſcallo ibidem primo die Aprilis, Anno, &c.* Co. 4. 2.

If

If it be for one Manor or Place thus:

Manerium de Slaughter. ff. *Cur' Vis' Franc' pleg' de S. pro Manerio de S.*

The Manor of Slaughter. The Court of view of Frankpl. for Slaughter, for the Manor of Slaughter, *&c.*

If the Leet and Court Baron be kept together, as they may be, thus:

ff. *Cur' Vis' Franc' pleg' cum Cur' Baron' J. S. Militis pro Manerio de S. ibidem tent', &c.*

Slaughter. The Court of view of Frankpl. with the Court Baron of *J. S.* Knight, for the Manor of Slaughter there held, *&c.*

Then let the Cryer make three ſolemn Proclamations, and then let him ſay after the Steward, thus:

All manner of perſons that have been warned to appear here this day, or owe Suit to this Court [or Courts] to be held here this day, come in and doe your Suit; And all Officers and others, anſwer to your names at the firſt call, upon pein and peril that ſhall fall thereon.

Then call all the Reſiants, and mark every one that appears with a prick, and amerce

amerce them that make default, thus: *A. B.* amerced ſix pence, and ſo all the reſt; and then put in the margin over againſt their names, Are Reſiants and owe ſuit to this Court, and have made default, therefore is every of them amerced, as appears upon their heads.

Then call all the Tything-men of every Tything, and ask him if his Tything be there; and ask him what Law-day, Hundred-ſilver, or Common-fine he hath brought, and receive it.

Then call all High Conſtables, and Petit Conſtables; which done, give to every one his Oath, thus:

You ſhall ſwear, you ſhall make true inquiry and preſentment of all ſuch Articles as ſhall be given you in charge, and belong to your Office concerning the Kingdom, and Lord of this Leet; and ſhall not conceal or forbear any man or matter out of favour or partiality: nor preſent any man or matter out of malice or evil will, but according to truth: *So help you God.*

And

And if the Tything appear with the Tything-man, ſwear them thus:

The ſame Oath that *J. S.* your Tything-man hath ſworn to keep for his part, every one of you ſhall keep for your parts; *So help you God.*

So Ale-taſters, and other Officers, if there be any there, are to be ſworn according to the cuſtome of the place.

Then having the names in writing of the Jury, 24. if ſo many be to be had, from the Bailiff, bid the Cryer make an *O yes*, and bid him ſay thus: You good men that are returned to enquire for the Kingdom, and the Lord of this Leet, anſwer to your names at the firſt call, upon pein of Amercement.

Then call them by name, and mark them with a prick that appear, and having a ſufficient number, call the Foreman to the Book, give him the ſame Oath as before to the Tything-men; then call the reſt, three or four at a time, and ſwear them as the Tything-man is ſworn before.

Then

Then enter the Jury thus:

A. B. —— Jur.
C. D.
E. F.
G. H. —— Jur.
J. K.
L. M.
N. O.
P. Q. —— Jur.
R. S.

Then count them; which done, command the Cryer to make a Proclamation, and then ſay thus; All you that are ſworn, draw near and hear your charge; and the Court commandeth all men to keep ſilence, while the charge is in giving.

Then give their charge to this effect.

MY Maſters, you that are ſworn in every action two things are to be conſidered: The action it ſelf, and the end of that action, whither it tends, for the wiſe man begins from the end. In the buſineſs where abouts we are, we will at this time take occaſion to add a third, which yet in order we will

will make the first, and that shall be first, by what authority we doe this, and what warrant we have for it, for that in all publick businesses is also considerable: First then for our authority, it is from the Law, from the supreme Magistrate; yea, from God himself, who hath and doth ratify in Heaven the Laws and Ordinances of Magistrates; agreeable to the Law of God; (whereof this is one we are now about) and requires every soul that it be subject thereunto. That this is done by authority of Law, and is agreeable to God's Law, I think none will deny. This one plain Argument will prove the first, the Catholick, and Universal, and Continual keeping and holding these Courts throughout the Kingdom in all times and ages, and that without controllment; as also certain Acts of Parliament, for the rectifying, reforming, and directions of these

theſe Courts, beſides the neceſſary and profitable uſe of them. Then that they are agreeable to God's Law, and not beſides nor againſt the ſame, is as clear as the former; for as our whole Law doth nothing elſe but forbid the evil, and command the good, ſo all the Ordinances of the Law (whereof this is one) are to no other purpoſe but to ſee this be done, to preſerve the juſt, and to find out and puniſh the contrary: And this will the better appear if we conſider the particulars of the things here inquirable and puniſhable given in charge: whereof (I dare be hold to ſay) there is not one that jarreth with the Law of God, but is conſonant and agreeable thereunto. Secondly, for the nature and quality of the Court, we ſhall the better ſearch it by the conſideration of the original of theſe Courts, and the end which is to come after will tell us ſomething

thing more herein, For the Original of this Court, our Law tells us, that all administration of Justice, was at the first for order sake put into the hands of the King, and men went to him as to the fountain and spring-head: But after by reason of the multiplication of People, and so of Causes, as the Realm was divided into Counties, so the power of the King was likewise divided into the Deputies of those Counties as to subordinate Magistrates, amongst whom he was called Chief Justice, and men were, as they still are, directed to them as the streams flowing from the fountain to fetch and draw Justice to themselves; and this Deputy is him we now call *Vicecomes*, our High Sheriff; of whose power and office it is not our purpose to speak, but to him is the Government of the County committed, aud for his help therein he hath two Courts assigned to him, the

The one for publick, the Sheriff's Turn; the other for private matters called the County Court. And this alſo by multiplication being found too great a burthen for the Sheriffs and the people too, was then ſubdivided farther into Hundreds and Pariſhes, who have divided the power of theſe Courts unto them in this the compaſs of their Precincts: and there were ſuch as were ſpecial Conſervators of the Peace now called High-conſtables in the Hundred, Petit-conſtables in the Pariſhes. And ſo theſe Courts by Common-law have the ſame power within the Hundreds and Pariſhes, as the Sheriff hath in his Sheriff's Turn, unleſs it be in ſome ſpecial caſes. So that this Court is a power for the redreſſing and reforming of publick wrongs to the whole body of the Kingdom: of publick wrongs I ſay, for private and perſonal matters ſimply. Firſt,

wrongs between man and man, whether by force or fraud, are not herein enquirable, but for them the County Court and Hundred is properly appointed; and therefore all ſuch preſentments as are onely of a wrong to ſome men or place alone are void. So that by this we ſee that we have the ſame power here that the Sheriff hath in his Turn, unleſs it be in ſome ſpecial caſes: and the nature both of this and that Court are to enquire and reform publick injuries, and ſuch as are againſt the body of the Kingdom.

Then for the ends of this Court, they may be three.

1. To take notice of the Hundreders, and to keep an account of them: and therefore it may be called the view of frankpledg, or the overſight of the people, who were all anciently call'd pledges, whereof one was the chief; for that then they

they were pledges one of another's behaviour, whereof he that we now call Tithing-man was chief.

The ſecond end may be, that the people may be inſtructed in the Laws of the Realm, and know what they ought to eſchew, and what to follow.

And thirdly, and eſpecially, for more ſpeedy, eaſie and due execution of Juſtice. For which purpoſe (as you know) we have here enquiries and ſearch after offenders, a preſentment of them, and a proceeding againſt them. And in order and reference to theſe ends, we have charged you upon oath to make, yea, to make diligent enquiry: So that you are not onely to preſent what comes and is offered to you, but you are to ſearch about, and that diligently, for occaſions; and that as you ſhall find, truly and faithfully, without favour or fear to preſent: wherein I doubt not of

your care and conſcience. For me to enter into the learning of an Oath, and Arguments Divine to perſuade you to care and your duty in this buſineſs, I hope it is altogether needleſs: we live in times of abundance of light and knowledge, and all (I hope) do know the Lord. Yet let me ſay this, an Oath is a Sacred Ordinance of God a holy Invocation of his Name, to witneſs the truth of that we ſay or promiſe. The qualities or qualifications of it when it is done well, is in Truth, in Righteouſneſs, and Judgment. That you omit none of the Truth, and that you preſent nothing above the truth. Secondly, that you do it alſo with Judgment, well knowing what you do. And thirdly, with Juſtice, dealing to every man his due, without any miſaffection of love or hatred, fear or favour. Though it be too common a fault, ſlightly and ſuperficially to

paſs

paſs through the buſineſs, yet I hope better things of you; that you will more reſpect the Oath of the Lord laid upon you, you will weigh the grace and favour of God to us in the enjoying of theſe Courts, that we have or may have Juſtice, at ſo eaſie a rate; and that you may not be charged for receiving the grace of God in vain, and abuſing his favour, I know you will be carefull: you will weigh, that by the carefull and honeſt diſcharge of your duty in this buſineſs, God will be honoured, Law obeyed, our ſelves and others benefited. Elſe on the contrary, if you be found negligent or corrupt, God's Name ſhall be taken in vain, which he will not hold guiltleſs. And if of every idle word account be to be given, much more of every wicked and falſe Oath, the Law offended, Juſtice hindred, and your ſelves in ſouls and bodies endangered: for

the Lord will be a ſwift witneſs againſt the falſe ſwearer and the Law will ſet her ſelf againſt him.

The Articles of your charge are like the offences and offenders you are here to enquire of, and they are of two ſorts. Some of them are greater, and ſuch as this Court hath no farther to doe with but to enquire of and preſent; you muſt enquire of, and preſent them, The Steward muſt then tranſmit them to ſome other powers to be proceeded upon farther. And ſome of them are leſs, and ſuch as whereof this Court hath a power of *Oyer* and *Terminer*; power not onely to enquire of, but to proceed upon, and to puniſh. And theſe alſo are ſuch as this Court hath power in either by the Common-law, or by Statute Laws. We ſhall caſt them all together, and give them to you in the leaſt room and eaſieſt way that we can,

We

We ſhall firſt give you the firſt ſort of offences here to be enquired of, which we ſhall but onely touch upon: ſo you are to enquire of all offences which are or were Felonies by the Common-law (except about the death of a man.) And in this conſideration you are to enquire of thoſe offences, that being Treaſon do include Felony, or be onely Felony; and thoſe offences that being Felonies by the Common-law, are now by ſome Statutes made Treaſons. So you were to have enquired of and preſented all that did imagine or endeavour the taking away of the life of the King, Queen or Prince, all that had defloured the Queen, or wife of the Prince, or King's eldeſt daughter unmarried; ſo you are to enquire of any that levy war againſt the Kingdom, or adhere to the enemies thereof, counterfeit any of the great Seals or money, kill the

Juſtice of the one or other bench in doing their Offices, and ſuch like offences.

Felony. You are to enquire of all Larcenies and Felonies, in taking away of another man's goods; which are greater or leſs according to circumſtance. For to rob a Church of Pariſh goods, is ſacrilege: To take away any thing, though but a penny, openly or ſecretly, from the perſon of another, is robbery: To break a man's houſe with a purpoſe to rob, is burglary: and theſe are great offences. But in other caſes to ſteal a man's goods or cattel, if it be in value above twelve pence, is but an ordinary Felony; if under, it is but onely a Petit Larceny, for which the offender is to be whipt onely, and not to be brought in danger of the loſs of his life and eſtate, as he is for the reſt. The burning of houſes or barns of Corn, out-houſes adjoyning to dwelling-houſes,

houſes, in the night, is Felony by the Common-law: ſo the felonious taking of Doves out of the Dove-houſe in the night, young Doves or Goſhawks out of their neſts, Fiſhes out of Ponds or Trunks in the night, or tame Deer, Swans or Cignets marked, or Peacocks, it ſeems is Felony by the Common law. Of all theſe you ſhall enquire and preſent.

You ſhall enquire of the Acceſſories to theſe offences, be they before or after the offence. And after the offence; Firſt, either by the breaking of Priſon, and getting away himſelf: Or ſecondly, by helping to convey away the Priſoner, which may be by force, as reſcue or the like, or fraud: Or thirdly, by a voluntary or negligent eſcape of an offender: Or fourthly, by a miſpriſion, which is the concealment of a great offender and offence. For by all theſe ways a man may partake Acceſſories.

take of another man's offence, and ſo be liable to puniſhment.

Theſe are the firſt ſort of offenders; and if you ſhall find any ſuch, you ſhall enquire and preſent what Lands and Tenements, Goods and Chattels, they had at the time of their offence committed, or at any time after.

For the Lord's profit.

In the next place you are to enquire of ſuch offenders, and their offences, which may be heard and determined in this Court. And ſo you are firſt to enquire of ſuch things as concern the Lord's profit, and the ſupport of the Court, as of

Suitors.

Officers, and others that owe ſuit to this Court, and have not been called, or having been called have not appeared. Of ſuch as have lived a year and a day within the precinct of this Law-day, and are not liſted as reſiant: and hereto-

Oath of Allegeance.

fore, if they had not been ſworn to the King for their Allegeance, their

their Parents or Maſters were to be amerced for this. Of ſuch as withhold any cuſtoms or ſervices incident to the Leet from the Lord of the Leet, as Hundred weight, King's ſilver, or the like money, Of Treaſure trove, *i. e.* any that have found above or under ground a Treaſure, the owner whereof is not known, Of Waifs, *i. e.* goods ſtoln and left by the Felon in his ſtrict purſuit. Of Wreck, *i. e.* the goods upon a Shipwreck caſt into the Sea, that are come to Land, the Owner being caſt away. Of Eſtray, *i. e.* the tame beaſts found wandring within the precinct of the Law-day, and not owned by any man. Of any that claim any Royal Franchiſes, or abuſe them within the Leet. For all theſe offences the offender is to be amerced according to your deſcretion.

Cuſtoms. Hundred weight. Treaſure trove. Waif. Wreck. Eſtray. Franchiſes. Amercement.

The Eſcheats of all Felonies did pertain to Lords, and therefore are in-

Eſcheats.

enquirable here: you are to enquire therefore of all kinds of forfeitures to the State.

Common Nuſances. Secondly, you ſhall enquire of common annoyances, and popular grievances, *i. e*, of things done to the common grievances of many. For as to the particular grievance of one man, or ſpecial grievance of one Pariſh, you are not to enquire in this Court; but that which is or may be general, and to many perſons and places. And ſo it is either of a higher nature; as baſe and lewd Ale-houſes, though licenſed. Inn-mates, *i.e.* ſuch as dwell together in a Cottage, within another man, though in ſeveral rooms of the ſame houſe, paſſing in and out of the ſame door, being poor, and not able to maintain themſelves. Cottagers, ſuch as build new, or convert old houſes into new, not laying four acres of Land to it. And ſuch as divide and multiply

10 s. a month.

10 li. the erecting. 40 s. a month for continuance.

tiply houſes that become hurtfull to the place by overpeſtring it with poor. Or of a lower nature. 1. In the ſtreets of Towns, by Common-ways, Cawſeys or Bridges leading between Towns, by ſtopping up the Ditches, or not ſcouring them, building houſes or walls to ſtraiten, incroachment, turning, digging pits, building houſes, pales or hedges, laying blocks, or not repairing of them, or other doing to them, to the hazard or grief of the Traveller. Secondly, in the common Waters by ſtopping, turning or corrupting them, to the hurt of them that uſe them. Thirdly, in the Air, by corrupting it with houſes of Office, laying of Garbage, Carrion, or the like, if it be near to the common High-way. Fourthly, in the proviſion for mens bodies, when either Victuallers, Butchers, Bakers, Cooks, Brewers, Maltſters or Apothecaries do make or ſell

Victuallers. Maltſters.

that

that which is corrupt and not wholſome for mens bodies: as when bread or beer is made of bad corn, malt, or hops, or medicines of bad drugs or ſpices, or the bread ſold or offered to ſale is not well baked, or beer not well brewed, or the like; or that they kept not the due Aſſiſe ſet down for bread and beer and ale. Theſe are common Nuſances, whereof you are to enquire and preſent.

And for theſe the offender may be amerced, and an order may be made under a penalty to reform it: and if it be a ſtanding Nuſance by a houſe or wall, it may be pulled down. But for every one of theſe Nuſances, being *malum in ſe*, and againſt the Common-law, the offender may be amerced according to your diſcretion: or where any Statute hath appointed a ſpecial penalty, and this Court hath cogniſance of it, he muſt pay that penalty;

Amerced.

nalty; as for making bad malt, upon 2 *Ed.* 6. 10.

If any water any hemp or flax where Cattel uſe to drink. 20 s.

In the next place you ſhall enquire of notorious and common treſpaſſes: as if any great affrays or outcries, or any affray and bloudſhed have been made, by whom, and with what weapons. For the weapons that gave the blow, or were drawn to break the Peace, are forfeit to the Lord of the Leet. Of Riots, Routs, or unlawfull aſſemblies that have been made, and Rapes. For theſe are to be puniſhed here not as upon the Statutes, but as an offence at the Common-law. So if any levy Hue and Cry, and apprehend a man without cauſe, for this the offender is to be amerced according to your diſcretion. Great treſpaſſes.

Next of all you ſhall enquire of and preſent the common drunkard, the common Alehouſe-haunter, eſpecially Evil members and perſons of ill behaviour. Haunters of Alehouſes.

ſpecially if he ſpend much there, and have little. He that keepeth, or doth uſually frequent a common baudy-houſe. He that is a common Barretor, *i. e.* that takes parties, and moves Suits, and that commonly for ſmall matters, and taking the worſt ſide. The railer and ſower of diſcord between neighbours. The eveſdropper, *i. e.* he that doth harken under windows, and the like, to hear, and then tell news, to breed debate between neighbours. The night-walkers, he that ſleepeth by day, and walketh by night. The common hedg-breaker; a Rogue, Vagabond, and ſturdy perſon, that doth wander up and down. The maſterleſs perſon that lives without means idlely, without Maſters, fareth well, hath nothing, and cannot give account of his life. The common Scold; he that commonly goeth in meſſages for Thieves, or doth harbour and entertain

Incontinent perſons.

Barretors.

Eveſdroppers.

Night-walkers.

Scolds.

tertain them, knowing them to be dangerous and ſuſpicious; all theſe may be amerced, and be bound to the good behaviour by a Juſtice of Peace.

Amercement. Good behaviour.

You are alſo to enquire of, and preſent, any one that hath been drunk or tipling in any Ale-houſe; any Ale-houſe-keeper that doth ſell without Licence or being licenſed doth ſell leſs than meaſure, one quart of the ſtrong, and two quarts of the ſmalleſt for a penny; that doth ſuffer any to ſit tipling in his own houſe; or if any do tipple in an Ale-houſe.

5 s. a time, or ſix hours in the Stocks. 20 s. a time. 20 s. a time. 10 s. a time. 1 s. a time.

To remove bounds and marks between Neighbourhoods, Hundreds, Pariſhes, and Commons, this tends to debate, and ſuch perſons are very ill members, and may be puniſhed here.

Bounds.

In the next place you ſhall enquire of Officers, Conſtables, Tithing-men, Haywards, and the

Officers.

like, that have refuſed, being duly choſen, to take upon them the Office, and take the Oath, or being ſworn doe not their duty: as Conſtables that doe not their duty in keeping the Peace, watch and ward, in the purſuit of Hue and Cry, and apprehending of Felons, and ſafe keeping of them when they have them, in the ſearching of houſes every month for unlawfull games, in the puniſhment of Rogues, and in execution of the Steward and Juſtice of Peace's warrant againſt drunkards, *&c.* or the like: and for theſe offences they are to be amerced according to your diſcretion. For not puniſhing Rogues, he is to loſe twenty ſhillings for every default; and for not executing of the Juſtice of the Peace or Steward's warrant againſt drunkards, tiplers, *&c.* there is a certain puniſhment which muſt be purſued.

Amercement.

Next

Next you ſhall enquire whether you have the Inſtruments of Juſtice, the Pillory, Stocks, Ducking-ſtool, and common Pound, all in good reparations amongſt you; if not, by whoſe default it is: and for the lack of theſe, the Townſhip is to be amerced according to your diſcretion. Inſtruments of Juſtice.

Next you ſhall enquire of them that oppoſe or diſturb the execution of Juſtice: as if any do make any pound-breach, and take or let out any diſtreſs, or if any reſcue be made on any Officer in the doing of his Office, to take away goods diſtrained, or any perſon arreſted, to the impediment of Juſtice, or if one let another out of the Stocks, or, any eſcape be ſuffered; the offender may be amerced according to your diſcretion. Diſturbers of Juſtice.

In the next place you are to enquire of deceits and other offences in trade and traffick, and ſuch as Deceit in trade and traffick.

are employed therein; of all ſuch as either make or ſell deceitfull wares, or uſe deceit in that they ſell; as if a Butcher blow up his meat, or the like; or a Tradeſman ſell by falſe weights and meaſures, or by two; that buy by greater, and ſell by leſſer meaſures; or if Bakers and Brewers keep not the Aſſiſe, the prices and quantities, according to the writing of the Marſhalſea: that either ſell leſs in weight or meaſure, or take more in price than is ſet down: for theſe offences they are to be amerced as you ſhall think fit. Or if Victuallers or Fiſhers do ſell at unreaſonable rates: or if any be a Foreſtaller, Regrator, or Ingroſſer; (that is) do buy any proviſion or other thing coming towards any Fair, or Market, or City, or Port, to be ſold, or ſhall agree to buy it before it be brought into the Fair or Market to be ſold, or ſhall perſuade with any to ſell them dearer, or to for-

Weights and meaſures.

Aſſiſe.

Amercement.

Foreſtaller, Regrator and Ingroſſer.

forbear to bring them into the Market, or buy up any proviſion in a Fair or Market, and ſell the ſame again in any Fair or Market in the ſame place, or within four miles thereof; or buy up Corn, Butter, Cheeſe, or other dead victuals, with intent to ſell it again to advance the price thereof: theſe are offences againſt the Common-law ſtill, and ſo to be enquired of here, and the offender is onely to be amerced for it here, according to your diſcretion.

Baker.

If any Baker in any City, Town Corporate or Market Town, make or ſell any horſe-bread, which is not of lawfull Aſſiſe, and a reaſonable weight, after the price of Corn and Grain in the Market adjoining. Or if any Hoſtler or Inholder, dwelling in any City, *&c.* make horſe-bread in his Hoſtry, or without, or ſell not their horſe-bread, and their hay, oats, beans, peaſe, provender and all kind of victual, both

1. Offence fined.
2. Impriſonment 1 month.
3. Pillory.
4. To be forejudged from keeping an Inn.

for man and beaſt, for reaſonable gain, having reſpect to the prices in the Markets adjoining, without taking any thing for litter. Or if any Inn-holders or Hoſtlers dwelling in any Thorowfare Town or Village, (being no City, Town-corporate or Market-town, where any common Baker having been an Apprentice at that trade by the ſpace of ſeven years is dwelling) make it not ſufficient, lawfull, and of due aſſiſe, according to the ſaid price of Grain and Corn.

Tipler. If a Tipler ſell not by meaſures allowed and ſealed, he may be puniſhed by the Common-law, or upon the Statute.

Butcher. Victualler. If any Butcher, Cook, Fiſher, or other Victualler, ſell any manner of corrupt Victual, not wholſome for man's Body.

Malſter. 2 s. every quarter. If any Malt-maker make any Barly-malt, (the Months of *June*, *July*, and *Auguſt* onely excepted) but

but that it have, in the Fat and floor, ſteeping and ſufficient drying thereof three weeks at the leaſt; and in thoſe months, 17 days at the leaſt (without which it cannot be wholſome for man's Body.) Or if any mingle any Malt not being well and ſufficiently made, or being made of mow-burnt or ſpired Barly with other good Malt, and put the ſame to ſale. 2 s. every quarter.

If any perſon put to ſale any Malt not ſufficiently and well trodden, rubbed and fanned, whereby there may be conveniently fanned out of one quarter half a peck of duſt or more. 20 d. every quarter.

If any keep a Tavern or ſell wine by retail out of a Market or Corporate Town, or there without allowance of the Head-officers. Wines. 10 l. a day.

If any be a Tanner not brought up in the Trade, or the child of a Tanner, or marrying a wife that hath a Tan-houſe and Fats. Tanner.

Loſs of the hides.

If a Tanner ſhall uſe the trade of a Currier, Cordwainer or Butcher, or other uſing, cutting or working of leather.

If any but Tanners and Tawers of leather buy or agree for any rough hides but for ſheeps.

If any Tanners do not ſufficiently tan and dry their leather.

Currier, 6 s. 8 d. a skin.

If any Currier uſe any trade of cutting leather, or curry in any houſe, if it be in a Market-town, but his own houſe; or curry leather not well tanned, and do not well curry his leather, or ſhall gaſh any leather in the ſhaving.

Shoomaker, 3 s. 4 d. Searchers, 5 li. 10 li. Sealers 5 li.

If any Shoemaker make any ſhoes of leather not with good ſtuff, or offer to ſell them on a Sunday.

If Lords of Leets do not chuſe yearly Searchers and Sealers of leather; or if the men choſen refuſe, or accepting doe not their duty.

* Labourers Conſpiracy. 1. 10 li. 20 days impriſonment.

If any * Labourers conſpire and bind

bind themſelves to doe but ſuch and ſuch work, or ſo much, or in ſuch a manner, and not to end what another hath begun. 2. 20 li. or Pillory. 3. 40 li. or Pillory, and one year.

If any Victuallers conſpire or bind themſelves to ſell at ſuch prices. Conſpiracy of Victuallers.

If any Miller uſe deceit, change the griſt, or take more Toll than due; he may be amerced at your diſcretion. 10 li. 30 days imprisonment, *&c.* Amercement.

If any Butcher be a Tanner, or gaſh a hide, or water it but in *June*, *July* and *Auguſt*, or ſell a rotten hide, or ſell a Calf under five weeks old. Tanners.

If any be a Uſurer, and take more for the lone of money than his own again, this is an offence againſt the Common-law. 10 li.

Next you ſhall enquire of other matters: If any man build a Cottage for dwelling, not having laid to it four Acres of land at leaſt of his own free-hold and inheritance

to

40 s. a month. 10 s. a month.

to be always injoyed therewith; or if any willingly continue ſuch a Cottage; or if any place, or willingly ſuffer any Inn-mates in any ſuch Cottage.

High-ways. 20 s. for not chuſing, &c. 10 s. a time for the Plow's fault. 12 d. for the man.

If the Conſtables and Churchwardens do not chuſe Surveyors for the High-ways.

If they have not appointed every Plow and Man his work; and if they have not done their work accordingly with the Plow and Man, you are to preſent it. So if men do not dig their Ditches and pare their Trees adjoining to the High-way.

Hawking 3 s. a time.

If any hawk or hunt in other mens ground againſt their will, in their eared or codded Corn, before it be in Stacks or Cocks; trace or

6 s. 8 d.

kill any Hare in the ſnow by Dogs or otherwiſe.

10 s. a Partridge.

Take or kill any Pheaſant or Partridge with nets or engines in the night.

20 s. a Pheaſant.

If any keep any Greyhound, hunting-

hunting-dogs or Ferrets, or nets to take Pheaſants, not qualified.

If any uſe a Gun not having one hundred pound a year to ſpend, and ſhoot with hail-ſhot; or if he kill Pheaſants, Partridges, or the like Foul, therewith. Guns 20 l. a ſhot.

If every one have bows and arrows, and do uſe them; and if you have Buts well repaired: or elſe the Pariſh is to be puniſht for the Buts. Archery 6 s. 8 d. a fault. 20 s. 3 months.

If men duly called to Muſter come not with their Arms, but abſent themſelves without any good cauſe: or if Captains, Muſter-maſters or other Officers, take rewards of their Souldiers to diſcharge them in time of ſervice, or do not pay them having received it. Muſters 40 s.

If any keep houſes of unlawfull games, as cards, dice, or uſe to play at ſuch games. 40 s. and 6 s. 8 d. a time.

If any take or kill any Salmon or Trout out of ſeaſon, or take any Pickerel not being in length ten inches Fiſh.

20 s. a time, the fiſh and nets.

inches in fiſh or more, or Salmon not being ſixteen inches or more, Trouts not being twelve inches or more, Barbel not being twelve inches or more.

Concealment of a Jury, 20 s. a man.

If any Jury being charged to enquire of any of theſe laſt offences have not preſented it.

10 s. a Fiſh. Loſs of nets.

If any within a year fiſh with any net, or the like engin, whereof every meſh is not two inches and a half wide, unleſs it be nets to take Smelts, Loaches, Mennows, Buck-heads, Gudgeons and Eels; or for theſe fiſh with other nets than hath been uſual.

Horſes.

If any put in any ſtone-horſe of two years old under fourteen handfulls high into any Common,

Loſs of them.

or put any horſe there ſcabbed and infectious.

Crow-nets.

If any uſe Crow-nets, and thereby deſtroy thoſe vermin by which Corn is deſtroyed, and any man refuſe to pay his ſhare, for the taking of them.

If

If any take Doves in the winter by door falls or engins, ſee below at W. Doves.

And laſtly, you ſhall enquire of all the By-laws heretofore made at this Court, whether any of them have been broken, and by whom, and when, and how: And of all theſe things you ſhall make a certain and perfect preſentment.

The Charge being done, cauſe the Criers to make one Proclamation, and ſay thus:

If any man can inform the Steward or this Enqueſt of any Treaſon, Felony, or any other matter now given in Charge, or enquirable at the Leet, let him come into the Court, and he ſhall be received.

If any do come in, ſwear him thus:

The evidence that you ſhall give to this Enqueſt ſhall be the Truth and nothing but the Truth. *So help you God.*

Then

Then adjourn the Court thus by Proclamation.

All manner of perſons that have farther to do at this Court may depart at this time, and appear here again at two of the clock in the afternoon.

At which time returning, call the Court thus, after an O yes:

All manner of perſons that were adjourned over to 2 of the clock, or have farther to do at this Court, let them come into the Court, and give attendance at their peril.

Then call for the Preſentments of the Jury and Officers, and others that are ſworn. If they be not ready, give them a day, and adjourn the Court till then. And at that time call it as before, and enter all the adjournments in the Court Rolls.

But if their Preſentments be ready, call the Jury, and ask them whether they be agreed: and if they be all there, and ſay they are agreed, take them, and ask them whether they be content they ſhall be

be altered in form: if they ſay, yes, then take them in Engliſh, reade them, and amend the form, if need be, and afterwards turn them into Latin.

Then ſwear ſuch Officers and others as are to be ſworn, and make and ſwear Afferors, if any thing be to be affered, as the amercements for defaults and others, and let them affere them.

The Conſtable ſwear thus:

You ſhall well and duly execute the office of Conſtable for the Pariſh or Tithing of *A.* untill another be choſen in your room, or you be diſcharged by order of law. *So help you God.*

The Hayward thus:

You ſhall ſwear, that you ſhall well and truly ſerve in the office of a Hayward for this year to come; you ſhall duly and truly execute all ſuch proceſs as ſhall be directed unto you from this Court; and you ſhall from time to time ſignify and preſent all ſuch Pound-breaches as ſhall

ſhall happen to be made within your office; and likewiſe you ſhall preſent all ſuch Cattel eſtrayed, as ſhall uſually come within your office; and in every thing well and truly behave your ſelf during the time aforeſaid. *So help you God.*

The Afferors thus:

You ſhall well and truly tax, aſſeſs and affere, the ſeveral amercements here preſented, and now to you remembred; you ſhall not ſpare any man for favour, nor increaſe upon any man for malice; but upon every man according to the quality and quantity of his offence and faults. *So help you God.*

For Allegeance thus:

You ſhall ſwear that from this day forwards you ſhall be true and faithfull to our Sovereign Lord the King, and his Heirs and lawfull Succeſſors; and faith ſhall bear of life and member, and terrene Honour:

nour: And you ſhall neither know nor hear of any ill or damage intended unto him, that you ſhall not defend, *So help you God.*

And then diſcharge the Court thus with three Proclamations.

All manner of perſons that have appeared here this day, at this Court, and have farther to doe here, let them now come in, and they ſhall be heard; elſe every one may now depart, and are diſcharged of their attendance, and not to appear again at this Court, but are to keep their day again upon new warning.

And now having done with this Court, we come to ſpeak of the Court Baron.

CHAP. X.

What a Court Baron is, and the Manor.

Court Baron what it is.

THE Court Baron is an Assembly of Lord, Tenants, Steward and Bailiff within the Manor, to take care and enquire of causes concerning the Manor, to see Justice, duly executed, the acts and ordinances there passed to be recorded in the Rolls of the Court; the which Rolls are the Evidences of all Ordinances, Duties, Customs and Conveyances that do concern the Lord and Tenants, and are to be entred by the Steward, or other Officer indifferent between them, and are to remain with the Lord, that he may know his Tenants, Rents, Fines, Customs and Services. *Calth. f.* 46.

Evidence. Rolls of the Court.

Or (briefly) this Court is a Court that every Lord of a Manor hath within his Manor, as inseparably incident thereunto. And this jurisdiction was doubtless originally granted by the King to Lords of Manors, who then were great men, and by coutinuance is claimed and taken by prescription.

Prescription.

This

This Court is said to be double, the one for the Trial of Titles of their Land, for the taking and passing of Estates, Surrenders, Admittances, and Grants, and herein the Lord or his steward (as the custome of the place is) is Judge. And this is called the Copyholder's Court. And the other is for Trial of Actions under forty shillings; after the example of the County Court. And in this sense the County Court is called and accounted a kind of Court Baron: And in this Court the Freeholders are Judges. Of this latter we have nought here to say, but of the former Court onely: howbeit this is still in force, and exercised within some Manors every three weeks. And when the Court is of this double nature, the Rolls contain matters of both Courts: but the Court may be kept for Copyhold causes, though it want Freeholders. And for the keeping hereof, there is need of a concurrence of the Lord, Steward, Freeholders, Copyholders, and Bailiff or Reeve: And these all together can make a perfect execution of Justice in all that doth belong to the Jurisdiction of the Court.

2 Courts.

Judge.

County Courts.

Judges.

The Lord is chief to command and appoint the Steward. And he for matters of title between the Copyholders is ſupreme Judge in Law and Equity: ſo that he occupieth two rooms, Chancellour in caſe of equity: Judge in matter of right. He hath a great command alſo in things peculiar to himſelf. And yet in ſome caſes the Steward doth exerciſe the place of ſupreme Judge between Tenants in matter of title. He is in all places to direct and regiſter, and record all the proceedings of the Court between Lord and Tenant, and between Tenants, and to be indifferent between them.

Chancellour.

Steward. Judge.

Lord. More particularly he may puniſh offences, as not performing Cuſtoms, breach of By-laws, not diſcharging duties, and the like.

Secondly, decide controverſies about the title of Land: wherein obſerve this;

1. That he cannot meddle with any other Lands, but the Lands of the Manor.

2. He is not in judging tied to the ſtrict rules of the Law, but as a Chancellour in Chancery may upon bill redreſs matters in equity. *Co. of Copyhold, f.* 122.

3. He

3. He is to make admittances.

4. He may make Licences; wherein obſerve, firſt, he can doe more than the Steward; for he may in any caſe make admittances out of the Manor where he will, but ſo cannot the Steward. And he may grant a Licence to Alien by Deed, (and in or out of Court as it ſeemeth) but ſo cannot the Steward without a ſpecial cuſtome to inable, or a ſpecial authority from the Lord ſo to doe. *Co. of Copyhold, f.* 123, 124.

Steward. Admittances. Licence. Cuſtome.

The Freeholders, which are ſuch as have Fee-ſimple Land parcel of the Manor by Deed, theſe are Judges in all civil Actions, and in ſome caſes (by ſpecial cuſtome) in matters of right between Copyholders; they are alſo to affere, adjudge of amercements, and to return and certifie judgments.

Freeholders duty.

The Copyholders, which are ſuch as hold any of the Land parcel of the Manor by copy of Court Roll, theſe are to inform and preſent offences committed againſt the Lord within the Manor, or otherwiſe, according to that which the Steward ſhall give them in charge. And theſe being ſworn of the Jury, in this Court, are called the Homage,

Copyholders duty.

mage, being for the moſt part ſuch as owe Homage to the Lord of the Fee.

Bailiff's duty. The Bailiff is to attend the execution of the commands and proceſs of the Court, and to make return thereof when he hath executed them.

We cannot well go farther to clear up theſe things, till firſt we have made way thereunto by opening ſome others. And becauſe a Manor hath ſuch relation to a Court, that one of them cannot be, nor ſtand without the other; therefore we muſt of neceſſity ſpeak ſomething of the Manor.

CHAP. XI.

What a Manor is, and the parts thereof.

A Manor is Land in the hands of a Lord, of whom many Tenants (two at leaſt) do hold, to doe ſuit of Court. And it is made up of two things, Demeſnes and Services.

Demeſnes. The Demeſnes properly are that part of the Manor which is in the Lord or his Bailiff or ſervants hands; whereof the Tenant hath not, nor ever had to doe. But in a larger ſenſe it doth comprehend

prehend all the Copyhold Lands alſo.

The Services are the Rents, Duties and performances of the Tenant which they are to perform and doe to their Lord. For as a meſſuage or Lands cannot be called a Manor without Tenements thereunto belonging to pay Rents, and doe ſervices, but doth ſtill bear the name of a meſſuage or Lands: ſo if a man have Tenements which do pay Rents and doe Services to him, and no Meſſuage or Lands whereupon to keep Courts, and to receive his Rents and Services, this cannot be called a Manor, but a Seigniory in groſs. Services. Seigniory in groſs.

Services are of two kinds, (*viz.*) by Tenure and by Covenant: Services by Tenure are of two ſorts. As if a man at this day give Land in tail, or leaſe Land for life or years, keeping the Reverſion; in this caſe there is a Service of Fealty incident to this Tenure between *Donor* and *Donee*, Leſſor or Leſſee: but this maketh no Manor. But for the farther opening of this, theſe things muſt be obſerved. Some Reſervations do make neither Tenure nor Manor; as to doe Suit at the Lord's Court when pleaſe the Tenant, to beat The kinds of Services. Tenure.

or kill the Lord's Tenants that do treſpaſs in his Demeſnes, to come to the Lord's Court, and there to doe nothing. But if it be to come there to affere the amercement or the like, it may be a Tenure tending to ſupport a Manor. Some Reſervations to make a Tenure, but no Manor; as to amend a High-way, or to pray for the proſperous eſtate of the Lord, or to find the Lord and his Dogs meat when they hunt the Fox in ſuch a place. Some Reſervations do make both a Tenure and Manor; as to doe Suit of Court to the Lord's Court, upon warning, though twenty miles diſtant, to amend the High-ways within the Manor, to wait upon the Lord within the Manor for a certain time, to ſay Divine Service to the Lord and his Tenants in the Court-houſe before the Court ſit. Some Reſervations make a Service but no Tenure; as to wait upon the Lord twenty miles from the Manor, and the like.

2. A Manor is made by continuance of time, and cannot be made at this day by any perſon or means whatſoever, not the King himſelf. And therefore if a man at this day be ſeiſed of twenty Acres

Acres of Land, and enfeoff nineteen ſeveral perſons of nineteen Acres, and keep the twentieth Acre in his hands, and reſerveth Suit of Court and other ſervices to be done by theſe nineteen Tenants to the Court to be kept on the twentieth Acre; albeit theſe Eſtates be made by Deed indented, yet this is no Manor, but a Tenure in groſs onely. For a Manor muſt be by preſcription, and the Services time out of mind. *Calthrop, fol.* 10, 11.

For as all Services will not make a Manor, ſo thoſe Services which are by Covenant onely, or by Tenure, if they be made by agreement within the time of memory, they do not make a Manor. Nor can the Lord, albeit his Tenant be never ſo willing, unite two Manors in one, or annex any other thing to his Manor, or make that a part, which is no part of the Manor. *Coke of Copyhold, fol.* 53. 3. Union of Manors.

And yet it is held, that if the Tenants voluntarily ſubmit themſelves to ſuch an innovation, and the ſame be continued time out of mind without contradiction, this may make an union, and one in name and uſe of two diſtinct Manors; ſo

ſo if one Manor be holden of another, theſe two Manors may be united by eſcheat. But otherwiſe what they doe in one Manor is traverſable in another. *Co. of Copyhold, chap.* 31, 33.

And yet it is held, that a man may at this day in ſome ſort enlarge a Manor by adding ſome Services to it. As if the Lord give parcel of his Manor to hold by doing ſuit to the Lord's mill within the Manor, the Lord may diſtrain for this, and it is held to be parcel of the Manor. So if the Lord make a gift in tail, Leaſe for Life or years, of parcel of the Manor, reſerving Services in groſs, by this the Services of an ancient Manor may be encreaſed. And it hath been thought by ſome, that if a Lord have a Manor which doth extend it ſelf into two Towns, and he grant the Demeſnes and Services in one Town, that by this the Grantee hath a Manor. But enquire of this, *Calthrop. f.* 11. But this is certain, that if any thing have the reputation of a Manor, or be uſually called a Manor, though in truth it be no Manor, yet it may be granted by the name of a Manor. *Calthrop. fol.* 13. And a Manor and Court of Copy-

Grant.

holders,

holders, by cuſtome may be without any Demeſnes. See after *fol. Co. of Copyholds, fol.* 52,53.

Ancient Demeſne Manors and Lands are certain ancient Lands known by that name, and to be of that nature, which are recorded in the Book called *Domeſday.* This Land differeth not from other Lands, onely the Tenants of theſe Lands have certain privileges above the Tenants of other Manors. As ſee them, *Coke part* 4. *chap.*38. But the Court of this Manor is in the nature of a Court Baron, no Court of Record; a Court wherein the Suitors are Judges: And the proceeding herein is as the proceedings are in other Court Barons. *Crompt. Jur.* 230, 231. Ancient Demeſnes. Judges.

CHAP. XII.

The place wherein the Court Baron is to be held.

A Court Baron may be kept in any place within the Manor, as the Hundred Court may be kept any where within the Hundred, and is not like in this to the Sheriff's County Court, which

which in ſome Counties is by divers Statutes to be kept in ſome ſpecial places. But this Court cannot be kept in any place without the Manor. And yet if a man have two or three Manors, and time out of mind the Courts of all the three Manors have been kept in one of them; this may be good. *Co.* 1. *part fol.* 57.

CHAP. XIII.

The time when the Court Baron muſt be kept.

THis Court may be kept once every three weeks for the trial of Actions: And the Copyholders Court for paſſing Eſtates, and making admittances, may be kept as often as the Lord pleaſe.

CHAP. XIV.

What perſons are bound to doe ſuit to the Court Baron.

ALL Freeholders of the Manor are bound to doe ſuit to the Freeholders Court; and all Copyholders and cuſto-

cuſtomary Tenants, to the Copyholders Court. And all ſuch as are bound by Tenure or Covenant are bound to doe ſuit to both.

CHAP. XV.

The juriſdiction and power of the Court Baron, and the Steward there, and what things are to be enquired of in this Court.

FOR ſuch an offence as a Steward in a Leet may fine, the * Judge of this Court may amerce: and this Amercement need not to be affered; and for this Amercement the Lord may diſtrain if he can preſcribe for it. *Co.* 11. 45. *Br. diſtreſs* 13. But regularly in this Court, being no Court of Record, the Steward cannot doe much without the Freeholders, nor can they together impriſon any man: and yet *Conſuetudo loci eſt obſervanda*, for in ſome places the juriſdiction is different from other places.

Fine.
* Who is intended.
Amercement.
Affered.
Preſcription.
Impriſonment.

In theſe Courts, where are ancient Freeholders, they may hear and determine any civil Action for debt or damage under forty ſhillings between parties

Trial of Actions.

parties living within the place, or without the place, for any cauſe ariſing within the place, which are entred after this manner; and therein they are to proceed according to the Common-law, and example of the County Court. And as to this part of the juriſdiction, the Free-ſuitors alone are Judges, and the Steward can doe nothing without them. *Co.* 1. *part* 58.

Free-ſuitors. Judges.

Copyholders may in this Court try Titles of their Copyholds, and bring real Actions by plaints for this Land, and theſe Actions may be heard and determined here. And as to this part of the juriſdiction, the Lord or the Steward (as the cuſtome of the place is) is Judge.

Trial of Titles.

Judge.

Alſo in this Court one Tenant may prefer a bill to the Lord to be relieved in equity againſt another Tenant; and herein the Lord alone is Judge.

The reſt of the power of the Court lieth in making Eſtates, taking ſurrenders, and making admittances, and the like.

This Court being onely for the benefit of the place, and the Lord and Tenants of the Manor; the Articles are to

to enquire of ſuch things onely as tend to that purpoſe. As of the defaults of Suitors that owe ſuit to the Court. *Kytch. fol.* 54.

Of ſuch as withhold or conceal the Lord's Lands, Evidences or Franchiſes. *Kytch. fol.* 55, 56.

Of ſuch as encroach upon the Lord's Lands or Royalties. *Kytch. ibid.*

Of ſuch Tenants as are dead, and what is happened to the Lord thereby. *Kytch. fol.* 55.

Of any forfeiture by a Tenant, Freeholder or Copyholder. *Kytch, ibid.*

Of any incroachment by one Tenant upon another. *Kytch. ibid.*

Of any Surcharger or abuſer of the Common. *Kytch. ibid.*

Of any By-laws broken. *Kytch. ibid.*

CHAP. XVI.

The manner and order of proceeding in the Court Baron.

IN caſe of Actions tried here and pleas of Land in this Court, the proceedings muſt be much after the example of thoſe Courts out of which this is deriv'd,

riv'd the County and Hundred Courts, and according to the rules of the Common-law. And for the reſt of the juriſdiction, the Steward doth uſe to ſwear ſome of the Tenants: (which is called the Homage) theſe he doth charge with divers Articles, and upon them they do Preſent. And upon this preſentment the Steward is to proceed as upon the Preſentment in a Leet, ſave onely that (as ſome ſay) the Lord cannot bring an Action of debt, but is to diſtrain onely for the Amercement in this Court. 2 *H.* 4. 24.

Amercement. Diſtreſs. Debt.

For the manner of taking Surrenders and making Admittances, ſee afterwards.

The manner of keeping this Court followeth.

CHAP. XVII.

The manner of keeping a Court Baron.

FIrſt, a warrant is to be made to give notice of the Court: and it is good to give notice enough ſix days at the leaſt; but if it be leſs it is ſufficient in Law, unleſs there be any ſpecial cuſtome for

for it. This Warrant may be after this manner:

To the Bailiff of the Manor of *C.*

You are hereby required to ſummon and warn the Court Baron of *I. D.* Eſquire, to be holden for your Manor of *C.* upon the third day of *Apr.* next, at the uſual place, (or at, *&c.*) before me or my ſufficient Deputy: And that you warn all perſons that owe ſuit to the ſame Court, to be then there to do their Services: And that you your ſelf be then there to make return hereof, and do your duty. Hereof fail not, *&c.* Given under my hand, *&c.*

W. S. Steward there.

Then the Style of the Court is to be entred thus:

ſſ. Cur' Baron. ibidem tent. coram W. S. Armigero, Seneſcallo Johan. Dutton Armigeri, Domini Manerii prædict. ſecundum conſuetudinem Maner. illius, ſecundo die Auguſti, anno, &c. Vet. lib. Intr. 12. Manerium de *C.*

Then command the Bailiff to make an O yes, and ſay after you thus:

All manner of perſons that have been warned to appear here this day, or have any thing to do at this Court, draw near and give your attendance.

Then if there be any Freeholders Court for entring Actions, let him ſay:

If any man will enter any plaints, let them come into the Court, and they ſhall be received.

And if any perſon will enter his or her plaint, it muſt be thus:

ff. *A. B. queritur de C. D. de placito debiti (vel) tranſgr. (vel) de placito captionis & injuſtæ detentionis Averiorum*, &c.

And hereupon the proceeding for the ending of theſe ſuits muſt be as it is in the County Court, or in the Hundred Court. The Defendant is to be called in by proceſs of Summons, and Attachment and diſtreſs, where the courſe is ſo: The Plaintiff to declare, and the Defendant to anſwer, as the caſe is: And the matter muſt be put to iſſue, and determined either by a Jury, if both parties agree

agree to have it ſo, or the cuſtome of the Court will warrant it; or by witneſſes; or, which is the moſt proper trial in all theſe Courts in ordinary caſes, by wager of Law, (that is) the Defendant's own Oath that he oweth not the money, and ſuch honeſt men as the Court ſhall aſſign to ſwear with him, that they are perſwaded he ſwears truth: Except it be in caſes where wager of Law will not lie. And after Judgment, the debt or damage recovered is to be levied of the party's goods, which being taken, may be ſold to do it. But for the method of proceeding herein, ſee in *Wilkinſon's Treatiſe of Court-keeping*, *f.* 148. and forwards; and in *Dalton's Treatiſe of the Office of a Sheriff*, *fol.* 157,158 and forwards.

Then let him ſay, if any man will be eſſoined, let him come into the Court, and he ſhall be received.

And if any be eſſoined let it be thus entred:

ff. I. N. eſſon. pro. ſect. Cur. per I. D.

Then call all the Tenants, Freeholders, and Copyholders, and Leaſeholders, that owe ſuit by Covenant, by their names, and apar-

2d. 2d.

Jur. præſentant quod A. B. *&* C. D. *ſunt liberi Tenentes hujus Cur. & ad hanc Cur. fac. defalt. Ideo ipſi amerc. prout patet ſuper eorum Capita.*

Homag. { *A. B.* / *C. D.* / *E. F.* / *G. H.* } Jur. { *I. K.* / *L. M.* / *N. O.* / *P. Q.* } Jur.

The Foreman's Oath.

YOU ſhall ſwear that you as Foreman of this Homage with the reſt of your fellows ſhall duly inquire, and true Preſentment make, of all ſuch Articles and things as ſhall be given you in Charge; and therein you ſhall ſpare no man, for love, favour or affection, nor Preſent any man for malice, hatred or envy: But according as things here preſentable ſhall or may come to your knowledge, by information or otherwiſe; ſo ſhall you make thereof true Preſentment, without concealment. *So help you God.*

Then

Then all the reſt of the Homage, and ſwear them by four at a time, thus:

The ſame Oath that *A. B.* your Foreman hath taken before you on his part, you and every one of you ſhall obſerve and keep on your parts. *So help you God.*

Then let the Bailiff call them by name, and bid them ſtand near, and hear their Charge.

Then give them their Charge to this effect.

YOU good men that are ſworn, our work is ſhort, and we cannot be long about it.

Our meeting is to keep a Manor Court, or Court Baron. We ſhall not ſtand to ſhew you the Antiquity or Original of this Court, but in a word or two ſhall open the nature, uſe and end of the Court. It is called a Court Baron, for that it is a Court incident to every Manor; which anciently or originally were the Courts

and Manors of Barons. For the King, having all the Demesne Lands, with liberty to parcell it out, and reserve what Services they thought fit, and to keep Courts within their precincts, granted great quantities of Land to the Barons and great Men; and they granted away part of this, some to one and some to another, to hold of them by such Services as they thought fit, and kept the rest in their hands. And hereof Manors were made: Which consist of Demesnes and Services. And they exercised that power of keeping Courts within these Manors, which hath been continu'd as now we find it. So that these Courts, notwithstanding at this day they are kept by prescription and custome, yet, doubtless, originally came by the King's grant of them, the Fountain of justice, who can erect and make Courts; and gave to these Lords in their

Courts the juriſdiction they now have to redreſs miſdemeanours within their precincts, puniſh offences committed by their Tenants, and decide controverſies within the Juriſdiction.

This Juriſdiction is double. The one part is for the trial of the Title of the Lands, for the taking and paſſing of eſtates, ſurrenders of eſtates, admittances and grants: And herein the Lord or his Steward, as the cuſtome of the place is, is Judge, And the other is for the trial of Actions under forty ſhillings: And herein the Freeholders are Judges. And one of theſe may continue, though the other be gone. So that the main end of the Inſtitution of this Court was for adminiſtration of Juſtice; but ſo as it hath reference to the good of this place onely, and not to the publick, as the Leet hath. In order to which end, you are put upon this Office

and duty, being bound by your Tenure to it, and engaged by a solemn and strict Oath to be faithfull in it. Your Office lieth in your Oath, and your Oath contains your Office; which is to inquire of and present the things which shall be given you in Charge, which are such things onely as concern the profit and advantage of the Lord and Tenants of the Manor. In all which, according to the conditions of an Oath rightly taken, you are to do in truth, and to present what you know to be true, and perform what you have promised and undertaken, and to take heed of perjury in Judgment, with due consideration of your calling to, engagement and duty in this work; and in righteousnes, to doe Justice impartially between Lord and Tenant, and Tenant and Tenant, and to give to every one his own without respect of persons, or any partiality: The

which

which in this work of Juſtice you muſt carefully ſhun. And ſo we ſhall hold you no longer in the Porch, but lead you into the Houſe, and ſhew you your work contained in the Articles of your Charge, which follow.

Firſt, you are to inquire of ſuch things which concern the Lord's benefit; as Firſt, Of ſuitors to this Court: And for this you are to know, that all that owe ſuit to the Court, be they Copyholders, or cuſtomary Tenants, where-e'er they dwell, or of what age ſoever they be, are to attend here to be Amerced. Where Partners have Land that oweth ſuit, the eldeſt ſhall doe the ſuit, and Joyntenants may agree ſo: but of them and of Feoffees of land ſince, *Quia Emptores*, every one that hath any of the land muſt doe ſuit.

Item, If any of the Lord's Land, Cuſtoms, Rents, Services, Franchiſes, Royalties, Services or Evidences

dences be concealed or withheld from him, or Herriots, Wards and the like, without his consent, by whom, and what it is and how long it hath been withheld.

Item, If any incroachment be made upon the Lord's Lands, or upon the Common, without Licence of the Lord.

Item, If any Tenant take away his Hawks, Woods, Fish, Fowl, or take any swarms of Bees, Swans eggs, Partridge or Pheasants eggs, Hawk or Hunt in his Manor, or doe him other trespass in his Manor, without leave of the Lord.

If any Tenant ought to grind at the Lord's Mill, and do not.

Item, If any of the Lord's Tenants, Freeholders or others, be dead, whose death is not yet presented, and by what Tenure he held his land, in Knights Service, or in Soccage, or by Copy, and what is come to the Lord thereby, and who is

is his next Heir, of what age he is, and in whoſe cuſtody, that it may be known what is due to the Lord; whether Wardſhip, Releif, Eſcheat, Herriot, or other profit hereby. If any Tenant be dead without heir general or ſpecial; or if any Baſtard purchaſe land, and die without Heir of his body: For in theſe caſes the Lord is to have the Land by Eſcheat.

Item, if any Tenant have alienned their lands, when, what and to whom and what is due to the Lord thereby, by the cuſtome: For the Lord muſt know who is his Tenant, that he may know of whom to expect his Service.

If any Tenant that holdeth by Chivalry alieneth, to defeat his Lord of his Wardſhip, and other profits.

Item, If any Tenant have committed any forfeiture. Freeholders may forfeit by committing felony,

in

in which case after the King hath his year and day, the Lord is to have the land, by alienirg his land in Mortmain.

Copyholders may forfeit by doing waste, letting houses fall, or be very ruinous by want of repair; or if he have two Copyholds, and impair one to amend the other; by doing Felony, by cutting down or marring Timber contrary to custome; by passing or letting their Land by Charter and Deed, for it must be by surrender; by letting for longer than a year and a day, according to the custome. If he be a Recusant and the Lord no Recusant. By not paying his rent, or performing his services, as suit of Court and the like, especially if he deny and refuse it. Or if any Copyholder have surrendred into the hands of the Bailiff or Tenants to the use of another according to the custome, and the Bailiff or Tenants

do

do not preſent it at the next Court: this is a forfeiture, if the cuſtome be not againſt it. If any reſcous or pound-breach be made of a diſtreſs taken by the Lord or his Bailiff within the Manor, for any rent or ſervice due to the Lord. If any remove the ancient bounds between Lord and Tenant, or one Lord and another, or between Tenant and Tenant. And many other ways he may forfeit his Copyhold.

Next we ſhall ſpeak of the things which concern the benefit of the Tenants. For this you are to inquire, if any take Common that hath none; or having Common keep more than his number, or the quantity of his Land; or chaſe and rechaſe between two Farms in two Pariſhes; or put in Cattel not commonable; or incloſe, dig, build upon, or otherwiſe abuſe and oppreſs the Common, without Licence of the Lord; or any Tenant incloſe the

the Land which ought to be in Common.

And lastly, you shall enquire of all other things by mẽ omitted, which you know to appertain to your Charge, and of all these, and the rest, make and return in to me a true presentment by four of the clock in the afternoon.

Then let the Bailiff make an O yes, and adjourn the Court till after dinner, as in the Leet. And then after dinner if any Surrenders or Admittances be to be made, or Actions to be tried, those things must be done. Otherwise call the Jury, take their Presentments, and swear two or more afferers, as in the Leet; and then discharge the Court.

CHAP.

CHAP. XVIII.

Of a Copyholder, and a Copyhold.

THE Copyhold eſtate is that for which a man hath nothing to ſhew but the Copy of the Rolls made by the Steward of the Lord's Court. For the manner is, That the Steward doth write out a Remembrance of this, (amongſt other things) that ſuch a one is admitted to ſuch an eſtate, and this commonly is tranſcribed in Parchment, which tranſcript is called the Court Roll; the Copy whereof the Tenant hath under the Steward's hand: And this is all his evidence, and he can make no Title but by this Roll. Rolls of the Court.

The Copyholder is he which is admitted Tenant of any Lands within a Manor, which time out of mind, by uſe and cuſtome of the Manor, hath been demiſed and demiſable to ſuch as will take the ſame in Fee-ſimple, Fee-tail, for life, years, or at will, (as the cuſtome is) according to the cuſtome of the ſaid Manor, by Copy of Court Roll of the ſaid Manor. *Weſt.* 1. *Symb. lib.* 2.

Sect.

Sect. 646. *Coke* 4. 25. *Litt. Sect.* 13.

So that to make a Copyhold estate, two things are requisite.

1. It must be a parcel of a Manor.

2. It must be demised, or demisable, time out of mind, *&c.* And if either of these fail, the Copyhold Tenure is gone. For this cause the Tenure cannot be made at this day, unless it be made by Act of Parliament. *Stat.* 35 *H.* 8. 13. *Co.* 1. *part. Inst. f.* 58.

These Tenants in most places are called Copyholders and customary Tenants; but in some places they are called Tenants by the verge, base Tenants, or bond Tenants, *&c.* And so are the Lands called; base land, bond land, *&c.*

The grant of this Tenant is at the will of the Lord. So the Tenant was anciently a bond-man, and his Tenure a base Tenure: But time hath changed both, and now he and his estate both are so far free, that if he pay his rents and do his services according to the custome of the place, the Lord cannot hurt him or his estate. *Co.* 4. 29.

And if he or any other evict him, he shall have relief against them, whereof see afterwards.

If

If any of the Tenants will transfer or alien any of their Copyhold Lands, It muſt be done by way of ſurrender to the Lord or his Steward, or ſome of the Tenants, according to the cuſtome of the place, to the uſe of ſuch perſon who is to have it for the time agreed upon between them; and then the party is to pay his Fine, and to have it from the Lord according to the ſurrender, and to have it entred, and a Copy of it, according to the cuſtome of the place; and if the Lord after ſurrender refuſe to admit, or die, or his eſtate end before admittance, he or his ſucceſſour ſhall be compelled to make the admittance. And by Deed or otherwiſe ſuch a Tenant cannot alien his land without committing a forfeiture, no not by way of exchange with another Tenant. And if the Copyholder will deviſe it, he muſt ſurrender it to the uſe of his laſt will, and declare his intent. *Co. of Copyholds, f.* 35. And for this the Tenant need not alledge a cuſtome, for this is common Law: So neither for a ſurrender out of Court into the Lord's hands. But to ſurrender to three of the Tenants, or elſe to the Bailiff or Reeve out of the Court,

1. How the Copyholder may grant the land. Surrender.

Admit.

Alienation.

to make this ſurrender good, there muſt
Cuſtome. be a ſpecial cuſtome alledged for it. *Co. 1. part f.* 59. And yet by deed of Releaſe he may extinguiſh his right to a Copyhold whereinto another is before admitted, and hath ſuch an eſtate, as upon which the releaſe may enter. As if a ſurrender be made out of Court to
Preſentment. the uſe of *J. S.* and it is not duly preſented according to the cuſtome, and therefore void; yet *J. S.* is admitted accordingly, and after he that hath the right doth by Deed releaſe all his right to *J. S.* this will bar him, and make good the eſtate. Contrary, where the eſtate to paſs by the releaſe doth paſs by way of enlargement. As if a Copyholder by Licence leaſe for years, and then doth releaſe to the Leſſee for years. But I may ſurrender my reverſion into the Lord's hands, and he may grant it to the Leſſee. *Co. of Copyhold, fol.* 100. So where no precedent eſtate is by admittance, as if one diſſeiſe the Copyholder, and the Copyholder releaſe to the diſſeiſor theſe releaſes are void. *Co.* 4. 25. One Copyholder being ouſted by another cannot releaſe to him. If a Copyholder be ouſted, and the Lord admit him that

ouſted

ouſted him, by his releaſe the Copyholder may extinguiſh his right. *Coke chap.* 114. And yet if a ſurrender be made out of Court upon condition, and preſented as abſolute, and ſo the admittance is made, the ſurrender by releaſe may make it good. *Co. of Copyhold. f.* 101. But if I be ouſted, and the Lord admit him according to the cuſtome, I may releaſe to him. If a Copyholder do bargain and ſell his Copyhold land to his Lord without any Surrender, it is ſaid this will paſs it; but if his eſtate be an eſtate of Inheritance, *Contra per Curiam M. Jac. B. R.*

2. Conſider according to Common Law.

Theſe eſtates are in ſome caſes ruled according to the common Law, and in ſome caſes according to the cuſtome. And therefore if ſuch a Copyholder be put out of his land by his Lord, or any other, heretofore he had no remedy but in the Lord's Court, or in Chancery: yet at this day he may have remedy againſt his Lord or any other by *Ejectione firmæ*, or Treſpaſs, or in Chancery, as a man that hath ſuch an eſtate by Deed. *Co.* 4. 21. 29. 22. *&c.* And if he make a Leaſe rendring rent, he may bring debt for it; and if one cut his trees, he may have an Action of treſpaſs.

Ejectione firmæ.

Eſtates in Fee ſimple, tail, for life.

The ſame words which will make eſtates in Fee-ſimple, Fee-tail, for life, *&c.* upon a Deed will make eſtatesby Copy: And therefore if a Surrender be to the uſe of *I. S.* without limitation of any eſtate, hereby *I. S.* ſhall have an eſtate for his life onely; and yet by cuſtome in ſome places it is otherwiſe. And if a Copyholder in Fee ſurrender *Habend.* after his deceaſe to the uſe of his child, *in ventre ſa mere*, and the heir of this child; and if it die before marriage, or full age, then to the uſe of *I. S.* and his heirs; by this the Father hath an eſtate for life, and the limitation to the child is void; and ſo it ſeems is the remainder alſo. *Co.* 4. 21, 22; &c. For a Freeholder cannot commence *in futuro*, nor one Fee depend on another. *Simſon's caſe adjudg. Mich.* 13 *Jac. B.R.* And deſcents of this land as well as the creation of the eſtate ſhall be guided by the rules of the common Law, except there be any ſpecial cuſtome in the place to the contrary, the eldeſt ſon ſhall inherit, *Poſſeſſio fratris facit ſororem eſſe hæredem*, of the Land in a Fee-ſimple: Otherwiſe it is in the iſſue of aCopyholder in tail. This land may be

be entailed by cuſtome; *Co. of Copyhold, f.* 136. and the iſſue ſhall have a *Formedon in deſcender.* If one have iſſue a Son and a Daughter by one *venter*, and a Son by another, and the eldeſt purchaſe a Copyhold in Fee, and die without iſſue, the Daughter ſhall have the Land. *Co. of Copyhold*, f. 143. Entail. Cuſtome. Deſcent.

If one have a Copyhold eſtate to the heir of the mother's ſide, and he die without iſſue, it ſhall go to the heirs of the mother's ſide, and ſhall rather eſcheat than go to the heirs of the father's ſide. But if I purchaſe Copyhold Land, and die without iſſue, and have no heirs of my father's ſide, it ſhall go to the heirs of my mother's ſide. If there be father, uncle and ſon, and the ſon purchaſe this Land and die, it ſhall go to the uncle, not to the father. So if there be three brothers, and the middle purchaſe this Land, and die without iſſue, the eldeſt ſhall have it. And if there be two partners or Tenants in common of this Land, and one die having iſſue, his heir ſhall inherit, not the ſurviver. *Contra* of Joyntenants. *Co. of Copyholds, Sect.* 50. *Calthrop, f.* 88, 89, 92, 93.

3 Consider according to cuſtome.

But in other things they differ from other Inheritances, and the rules of the common Law, and therefore theſe Inheritances, except there be a ſpecial cuſtome for it in the place, have not theſe collateral qualities which concern not deſcent, as other inheritances have. For ſuch Land ſo deſcended ſhall not be accounted Aſſets in the heir's hands to charge him upon an obligation, the wife ſhall not be endowed, the husband not Tenant by the courteſie, deſcent ſhall not take away entry. *Co.* 423.

Aſſets.

Dower.

Courteſie.

A ſurrender made by a Tenant in tail of his Land, (admitting it may be entailed) or by a husband of the Copyhold he hath in the right of his wife, makes no diſcontinuance. *Co. of Copyholds, f.* 144.

Diſcontinuance.

If the Lord enter into a Statute, or take a wife, and after the Copyhold become void, and in the Lord's hands by Surrender, forfeit or eſcheat, whiles it is in his hands, it is liable to this charge; But if he grant it anew, according to the cuſtome, the Copyholder ſhall hold his eſtate diſcharged of both. *Co.* 8. 63. 4. 23. The true reaſon is, becauſe when the Copyholder is once admitted, he is

Statute.

in

in by cuſtome, which is paramount the rant: Therefore if the Lord grant a rent-charge, and then grant the Copy, yet ſhall the Copyholder hold the land diſcharged of the rent as it ſeemeth, though then he be not his Tenant. 8. *rep.* 63. b. For no ſtranger can be his Tenant without his conſent. *Calthrop, f.* 98. *Contra.* So if the Feoffee of a Manor on condition, before the condition bro- Condition. ken, make Copyhold eſtates, they are good. *Co.* 4.4.24. If the Copyholder acknowledge a Statute, and then ſurrender, the Land is not liable. *Calth. f.* 98. If Tenant in tail (without a ſpecial cuſtome) or Copyholder in the right of his wife ſurrender, this is no diſconti- Diſcontinuance. nuance. *Co.* 4. 23. *Dyer.* 263. So if the Lord make a Leaſe for years of the Manor, (excepting all woods and underwoods) and the Leſſee make grants Grant. by Copy according to the cuſtome, the Exception. Copyholder ſhall have wood in theſe woods according to the cuſtome. *Co.* 8. 107. So if the Copyholder be uſed to have common of paſture or Eſtovers in the Lord's woods or waſtes, and the Lord alien the woods or waſtes to another in Fee, and after make a Copyhold eſtate

Common. according to the cuſtome the Copyholder will have common there as hath been uſed. *Co.*8.63. But in this caſe the cuſtome in pleading muſt be laid ſpecially, otherwiſe it is of a Leaſe for life by Deed. As long as a Copyhold of Inheritance is in the Tenant's hands, it is

Charge. not liable to any eſtate, or charge of the Lord, as *Dower*, *Courteſie*, *Elegit*, *Statute*, &c. but when it is in the Lord's hands it is liable. *Co.* 4. 22. But a cuſtome in this caſe may make it chargeable. *Calth. f.* 88, 89, 92, 93.

CHAP. XIX.

What grant of a Copyhold eſtate ſhall be eſteemed good or not.

1. In reſpect of the Manor of which the Land is parcel, and of the Court in which the eſtate is granted.

DIvers things are requiſite to make a good grant of a Copyhold eſtate.

1 There muſt of neceſſity be a good Manor and Court continuing; for a Copyhold eſtate cannot be made without a Court, and a Court cannot be without a Manor; And then there muſt be a cuſtome for the allowance thereof, and this cuſtome muſt be in the ſame Manor: A Lord to give the Copyhold, a Te-

a Tenant of capacity to take, and the thing to be granted; which muſt be grantable, and may be held according to the Tenure, But for the opening of theſe things it muſt be known, touching a Manor,

1. That a Manor cannot be made at this day,

2. Albeit it cannot be made at this day, yet it may be marred: For a Manor may be diſſolved many ways. As firſt, if the Court Baron (which is incident to every Manor) be deſtroyed: For the Court and Manor ſtand and fall together. And therefore if all the Freeholders but one eſcheat to, or be purchaſed by the Lord, hereby the Manor is deſtroyed; For there muſt be two Freeholders at leaſt to ſupport the Court Baron, and two Copyholders at leaſt to ſupport the cuſtomary Court. So if the Lord ſuffer all his Copyholds but one to fall in hand, or make a Feoffment of all but one, hereby the Manor is diſſolved. But here this difference muſt be heeded: That there being (as we have ſhewed before) in every Manor where are Freeholders and Copyholders, two Courts, a Court of Freeholders, which is by com-

Manor deſtroy.

Court deſtroy.

Judge. Common Law for the trial of actions, wherein they are Judges, and a Court of Copyholders, which is for the surrendering and granting of estates, and making admittances, and wherein the Lord or his Steward is Judge; that one of these may stand without the other: And therefore if the Lord sell the reversion of all his Copyholds in Fee to one man, this man hath a Manor and a Court to this purpose, and may do all touching Copyhold estates which the seller might have done; and he that sells may do all that belongs to the Freehold Court, as he did before. *Co.* 4. 26. 6. 64. *Co.* 1 *part fol.* 58. So if the Lord make a Lease for years of all his Copyhold Lands; it seems the Lessee for the time of the Lease may keep Courts, and grant estates. But if the Lord make a Feoffment or Lease of one or of some of the Copyholds onely; it seems this Feoffee or Lessee cannot keep a Court, and therefore the Manor as to this parcel is destroyed. If the demeans be once by the act of the party severed from the services in Fee-simple, or the Copyholds from the Manor, hereby the Manor is destroyed for ever. *Co.* 4. 26. 6. 24.

If

If one have a Manor, and grant the Moiety of it to another, hereby the Manor is deſtroyed by *Juſt. Jones* opinion. So if the Lord ſell away the Inheritance of all the Copyholds to ſeveral perſons, hereby the Manor and Court of Copyholders is diſſolved. *Quære.*

And if the ſeverance be but for an inſtant, and without any tranſmutation of poſſeſſion, yet the Manor is deſtroyed. But by Act of Law a Manor may be divided: As when a Manor deſcends, and is divided between two Partners, that one have one part of the Demeſnes and Services, and another the other part; each of them have a Manor and a Court.

If one Manor held of another eſcheat, they are united and continue both.

And yet if a Court Leet, Waif, Stray, Wreck, and the like, be together by Preſcription, albeit the Manor be deſtroyed, yet the Leet, Waifs, *&c.* continue. *Calthorp, fol.* 13. Franchiſe loſt.

2. As a Manor may be diſſolved, ſo it may be ſuſpended for a time and revived again. As if a Manor come to Partners, and one upon the diviſion hath all Suſpenſion of a Manor.

the

the Services, and the other all the Demeſnes, and after one of them die without iſſue, ſo that his part cometh to the other alſo: By this the Manor is revived again. More ſtrong is the diſpoſition of the Law than of man. *Co.* 4. 26.

Fortior eſt diſpoſitio legis quàm hominis.

The Court muſt be kept in ſome part of that which is within the Manor; for if it be holden out of the Manor it is void: Except by cuſtome, he having two Manors, have time out of mind kept one Court for both. *Co. ſuper Litt. f.* 58.

2. In reſpect of the Lord of the Manor and his eſtate.

2. The thing required to the making of a good grant by Copy of Copyhold Land is a good Lord: That is, the party that makes the grant muſt be ſeiſed, (i.) he muſt be in poſſeſſion in, and have a good right or title to the Manor, of part whereof the eſtate is made. For the opening of which point, theſe things are to be known. That any perſon who may be a good granter in a Deed, may be a good granter of Copyhold eſtate: And that any perſon, man or woman, that hath a lawfull eſtate in a Manor for a time, may be a good Lord, to grant Copyholds, take Surrenders, make eſtates and admittances, according to the cuſtome of the Manor, notwithſtanding the diſ-

ability

ability of his perſon, or exility of his eſtate. And therefore it is held that a Lunatick or man *non compos mentis*, an Infant, an excommunicate perſon, a perſon outlawed in an Action perſonal, a Felon before his attainder by Outlawry, verdict, or confeſſion, being Lord of a Manor, may grant Copyhold eſtates for any time according to the cuſtome of the Manor, as another man may do; and the eſtates made by them are unavoidable. So a villain purchaſer of a Manor and alience in mortmain may make Copyhold eſtates till the Lord do make his entry. *Co. of Copyholds. f.* 89.

Non compos mentis. Infant. Outlaw. Felon.

A Tenant in tail for life, years, in Dower, by the courteſie, by Statute or *Elegit* of the Manor, may make Copyhold eſtates, as well as a Tenant in Feeſimple. So may a Tenant at will of a Manor by Copyhold, or at Common Law; and this of Copyholds in reverſion as well as Copyholds in poſſeſſion. And therefore if a Tenant for life of a Manor grant a Copy in reverſion according to the cuſtome, and die before the Copyholder; this is a good Copy in reverſion againſt all the ſucceeding Lords. *Adjudge* 29 *El. B. R. Sr. Pet. Carews* caſe.

Leſſee for life, years, or at will.

If

If one be ſeiſed of a Manor for life, wherein are Copyholds of Inheritance, and a Copyholder doth ſurrender to the uſe of a ſtranger in Fee, the Lord may grant and admit accordingly, and this will bind him in reverſion; but if the Copyhold be onely grantable for lives, it is ſaid then, the Lord upon ſurrender, cannot grant more than for the life of the granter. But if the Lord of a Manor for or during the Minority of a Ward, of which the Copyholds are demiſable for three lives ſucceſſively and not ſeverally, if in this caſe the Copyholder dieth, the Lord may grant it being void for three lives at his pleaſure, and this ſhall bind him in the reverſion, or his heir at full age. *Calth. Read* 50.

Quære.

If a Copyholder in Fee ſurrender to the uſe of the Lord for life, the remainder to a ſtranger in Fee, or keepeth the reverſion to himſelf, the Lord cannot grant this in Fee by Copy. *Nemo poteſt plus Juris in alium transferre quam ipſe habet.*

Grantee on condition.

So may a Feoffee or Leſſee of a Manor on condition, till the condition be broken. And yet a Leaſe for life by Deed in this caſe will be avoided. And it is held

held by ſome, that if a Leaſe be made for life on condition, and the Leſſee after the condition broken, and before entry of the Leſſor, make Copyhold eſtates, that theſe are good, becauſe this Leaſe is not void; but voidable at the pleaſure of the Leſſor. *Coke of Copyhold*, 89.

If the Feoffor or Leſſor after the condition broken keep Court, and make Copyhold eſtates, theſe are good; for the keeping of the Court is an entry in law. *Calthorp, Read* 64.

If a Feoffee of a Manor on condition to enfeoff another of it the next day, the ſame day after he hath the Manor make Copyhold eſtates, they are good; for it ſufficeth if he be lawfull Lord for the time. But if a Tenant for life of a Manor make a Leaſe for years of it, and die, and then the Leſſee for years maketh Copyhold eſtates, theſe are avoidable by the firſt Leſſor. So if a Leſſee for years of a Manor grant a Copyhold in reverſion, and before the reverſion happen, the Term is expired, the grant is void: And ſo it is if the Leſſee ſurrender his Term, and before the Leaſe ſhould have ended, the reverſion hap-

happeneth, yet the grant is not good. *Co. of Copyhold*, 88.

Gardein in Chivalry. A Gardein in Chivalry that hath a Manor of the Wards may make Copyhold eſtates upon it. The husband and wife within a Manor he hath in right of his wife, but not the wife alone, may make Copyhold eſtates; nor may the husband alone (as it ſeemeth) make eſtates.

Husband and wife. If the husband and wife in Frank marriage make Copyhold eſtates, and they be after divorced, the eſtates made before the divorce are good; ſo if the wife be after divorced for infancy.

Deviſe. If one ſeiſed in fee of a Manor, by his will in writing deviſe, that his Executors ſhall ſell or make Copyhold eſtates according to the cuſtome for payment of his debts, or the like, they may make good eſtates accordingly. *Co. upon Litt.* 58. And yet if the Lord deviſe that his friends ſhall keep Courts, or make Copies, and no more, this is not good. *Calth. fol.* 95.

So if one die ſeiſed of a Manor, having a daughter, his wife privily with child of a ſon, the daughter may make Copyhold eſtates till the ſon is born.

A

A Corporation, Biſhop or Prebend poſſeſſed of a Manor, may make copyhold eſtates. Corps Politick.

If a Parſon that hath a Manor, after Inſtitution, and before Induction, make copyhold eſtates, it ſeems theſe are not good; ſo if after Induction he do not reade the Articles, and he be after removed for this. But if he be deprived after for any crime, his grants before are good. *Co. of Copyholds, f.* 89, 90. Parſons.

If the Lord acknowledge a Statute, and after make a copyhold eſtate, and then it is extended, this will not hurt the eſtate. So if the Lord take a wife, and then make a copyhold eſtate, and then dieth, the wife's dower will not hurt the eſtate, though ſhe be endowed of the Manor. And yet if an heir after the Lord's death make copyhold eſtates, and after the Manor is aſſigned to his wife, ſhe may haply avoid this. *Co. of Copyholds*, 84. Tenant by Statute. Tenant in Dower.

If the Lord make a Feoffment in Fee, leaſe for life or years, of all his copyhold, the Feoffee or Leſſee may make copyhold eſtates, take Surrenders, Admittances, *&c.*

But if the Lord grant the reverſion of

one Copyhold, neither he nor the Grantee, nor both of them together, are able to grant any Copyhold eſtate of this Land.

If the Lord releaſe all the Services of the Freeholders of the Manor, or all the Freeholders eſcheat, yet the Lord doth continue a good Lord, and able to make Copyhold eſtates of the Copyhold Lands.

In all caſes where the Lord may make Copyhold eſtates *de novo*, he may take Surrenders, and make Admittances.

Diſſeiſor. Abator. But in theſe caſes and theſe perſons, a Diſſeiſor, Abator or Intrudor in a Manor, the Heir or Feoffee of a Diſſeiſor, Grantee of a Tenant in tail, one that holdeth after his eſtate is ended as a Feoffee or Leſſee upon condition, after the condition is broken, one that hath no eſtate at all, or no good eſtate, or the Copyhold is deſtroyed; theſe cannot make any Copyhold eſtate by way of voluntary grant, or take Surrenders, and make new grants accordingly.

Admittances. And yet it is thought that a Diſſeiſor of a Manor, or any ſuch Lord that hath a poſſeſſion onely of a Manor, may make admittances upon deſcents, or do any

any ſuch like Act, and that this will bind him that hath right. *Co.* 4. 27. 8. 63, 64. 1. *part* 58. 74. *Calthrop, f.* 98. 94. 90. 91. *Co. of Copypold*, 36. 80. 87. *Dyer* 375.

And yet if the cuſtome be deſtroyed by granting away the Reverſion, or where there is one Copyhold onely left, in this caſe he cannot make admittances, or do any thing as Lord, *Co.* 4. 27.

To make a good grant of Copyhold Land, there muſt be a good Steward of the Court wherein the ſtate is granted. And as touching this point, theſe things are to be known.

1. In reſpect of the Steward of the Manor. And of the Steward of a Court. Lunatick, Infant, Outlaw.

1. Any man may be a Steward: And therefore if an Infant, Lunatick, *non compos mentis*, outlawed, or excommunicated perſon, be made Steward; all Acts that he doeth according to his office are good.

2. He may be retained by word, as well as by Patent, otherwiſe it is if it be a Stewardſhip of the King's Court. And any colourable authority may be ſufficient to make a man a Steward to this purpoſe: Yea it is held that a copyhold granted by an under-Steward without authority from the Lord or high-

Steward is good. *Co.* 4. 3. *of Copyhold*, 126. 27. *Calthrop*, *f.* 73.

3. His authority is derived wholly from the Lord, whose person he doth represent, and under him in his absence he is Judge of the Court.

Judge.

4. He must doe all in the Lord's name: As if he take surrenders, make Grants or Admittances, or give licence to alien where he hath a special power from the Lord, or is enabled by special custome so to doe, he must doe this in the Lord's name. *Co. of Copyhold*, 125.

Licences.

5. The Steward cannot doe so much as the Lord himself: For the Lord himself may take Grants or Admittances in what place he please, without as well as within the Manor; but the Steward cannot doe so without the Manor. And the Lord may give licence to his Tenant to alien his land by Deed. But it is doubted whether the Steward can so doe or not in Court, without a special custome of the place, or a special authority from the Lord to enable him thereto. *Co. of Copyhold*, *f.* 124.

Admittances.

Licence.

6. This Office may be forfeit many ways. 1. By abuser; as if the Steward burn the Court Rolls, or be corrupt in Judi-

Forfeiture of Office.

Judicature, or the like. 2. Non-user; as when he is bound by his Patent to keep Court at certain times of the year without requeſt, and the Lord be prejudiced by this omiſſion. 3. Refuſer; as if he be bound to keep Court upon demand, and do not, albeit the Lord have no prejudice by it, yet it is a forfeiture. *Co. of Copyhold, f.* 129.

7. The Steward may appoint an Under-Steward. See for this *Co. of Copyhold, f.* 132. — Under-ſteward.

Any one that may be a good granter in a Deed at common Law may make a good Surrender, or grant of Copyhold Land: And as to this point theſe things are to be known. 1. Any Body corporate, or politick, being Lord, may make a Grant, or being Tenant, may make a Surrender of Copyhold land. 2. Grants by Lords, and Surrenders by other Tenants, as Felons before Attainder, Baſtards, Hereticks, Lepers, deaf, dumb, or blind men, are good. 3. He that is not a good granter, cannot make a good grant or ſurrender of Copyhold Land, without a ſpecial cuſtome to enable him thereunto. And hence it is, that Surrenders made by Infants, Aliens, Idiots, — 4. In reſpect of the Perſon which doth make the grant or ſurrender. Lord or Copyholder. Felon. Baſtard. Hereticks. Lepers, &c. Infants. Aliens.

Idiots, &c. Idiots, ſuch as are born deaf, dumb and blind, and women covert without their husbands, are not good. And yet it is held that a woman covert being joynt Tenant with another may ſurrender her own part to the uſe of her husband. But I doubt much of this. *Co.* 4. 26, 27. *Co.* 1. *part f.* 42. *of Copyholds, f.* 90. *Calth. f.* 93.

Feme covert.

4. A woman covert cannot ſurrender with her husband, but ſhe muſt be firſt examined by the Lord or his Steward, and this cannot be by the Tenants. *Calth. f.* 86, 87. 5. Such perſons as may grant or ſurrender, cannot grant more than they have. And therefore if the Copyholder be a Joyntenant, he can grant but his own part; he that is copyholder for life onely, can ſurrender but for his life. And yet if there be two Joyntenants of a Manor, and a copyhold eſcheat, and one of the Lords grant this copyhold alone; this is good to bind his companion. *Co. of Copyholds; f.* 91.

Joyntenant.

5. In reſpect of the perſon to whom, or to whoſe uſe it is made.

Any one that may be a good grantee by Deed may be a good grantee by copy, and a good copyholder. And herein theſe things are to be known. 1. A ſurrender or grant of copyhold Land may be made to Lunatick, Baſtard, man

of

of unſound memory, perſon attaint of Felony, Mayor and Comminalty, Infant, outlawed, or excommunicate perſon, bondman, or feme covert. But a Monk or Friar cannot be a Copyholder. And it is doubted whether an Alien born may be a good copyholder or not. *Perk. Sect.* 52. *Co. of Copyhold*, 97. *Calthrop*, *f.* 52. 2. The ſurrender to the uſe of a feme covert is good, till her husband diſagree to it. 3. In caſe of an Infant or feme covert as to the Lord's ſervice, for the Infant, it muſt be done by the Gardein or prochein Amy, and for the wife by the husband. 4. The Lord ſhall retain the land of the Idiot, or Lunatick, till he come to himſelf: So ſome ſay for the Infant's land till he be of age. *Calthrop*, *f.* 52. 65. 5. A ſurrender may be of Copyhold land to the uſe of the Lord himſelf, and he may have a copyhold to his own uſe. *Co. of Copyhold*, *f.* 94. doubted by *Calthrop*, *fol.* 52. 6. The husband may ſurrender to the uſe of his wife, and by a ſpecial cuſtome the wife may ſurrender to the uſe of her husband. *Co.* 4. 21. 30. *of Copyhold*, 94. 7. One Jointenant may ſurrender to the uſe of another Jointenant. 8. A ſurrender may be

Non compos mentis, &c. Feme covert. Lunatick. Infant. Husband and wife. Joyntenant.

Incertainty. of Copyhold land to the uſe of him that ſhall be heir of *I. S.* or the next child of *I. S.* or next wife of *I. S.* or to him that *I. S.* ſhall name; and is good: For nothing paſſeth till admittance. Otherwiſe it were of ſuch a grant by Deed. *Co. of Copyhold f.* 97, 98. Enquire. And a ſurrender to the uſe of the right heir of *I.S.* being alive is void. 9. A good grantee Atturney. may take by Atturney. *Co. of Copyhold, f.* 95. 10. A grant of Copyhold Land may be to two or more, and they ſhall Joyntenants. be Jointenants. *Kytch. f.* 11.

6. In reſpect of the place where it is done. The Lord of a Manor himſelf in perſon may make any grant of Copyhold Land, or take any Surrender, or make any admittance hereof, or a ſurrender, or deſcent in any place, as well without as within the Manor, and as well without as within the Court. But the Steward muſt doe it within the Manor, and in Court, or it is not good. And yet by a ſpecial cuſtome of the place a ſurrender may be made to the Steward, or to ſome of the Tenants out of Court, and this is good.

7. In reſpect of the thing granted. The thing granted, or ſurrendred, muſt be, at the time of the thing done, parcel of the Manor. For the opening of which

which point, theſe things are to be known.

1. A cuſtomary Manor which hath Copyholds within it, may be held of another Manor, and be granted by Copy as other Land may be. *Co.* 11. 18. So may Houſes, Land, Meadows, or Paſtures, and whatſoever doth concern them which is of perpetuity and parcel of the Manor, as a common, advowſon, or fair appendent, the veſture of herbage of Land, Underwoods out of a great wood, and that without the ſoil, if they have been uſually demiſed by Copy. And if the thing granted be incertain, it may be made certain by election, as in other caſes of grants at common Law. *Co.* 1. *part Inſt. f.* 58. *of Copyhold*, 117, 118. *Co.* 4. 31. *Co.* 4. 31. 37. *Co. of Copyhold*, 120. But ſuch things as lie not in Tenure, as a rent Bailiwick, or Stewardſhip, commons, or advowſons in groſs, which are incorporate Hereditaments, out of which no rent can iſſue, are not grantable by Copy. So the Lord's Demeſnes which were never let by Copy are not grantable by Copy. And yet if in this caſe the Lord grant them by Copy, he himſelf cannot avoid the grant, but

For the nature of it.

Incertainty.

but it will be good againſt him for his life. enquire how he ſhall plead it; as grant by Copy or by leaſe parol.

Parcel of the Manor.

2. The thing granted muſt be, at the time of the grant made, parcel of the Manor, otherwiſe the grant will not be good. And therefore if the Lord make a leaſe for years of the reverſion of one of his Copyhold Tenements; this Tenement (enquire 1 *Inſt.*325.a. *Plow. Com.* 103,6.)during this term is no part of the Manor, and therefore cannot be granted by Copy in the Lord's Court. But this haply may be in time reunited to the Manor, and then grantable. But if a feoffment be made with or without a deed by the Lord of the Manor, of one Copyhold Tenement; by this the ſame is divided for ever from the Manor, and cannot be granted by copy. And yet the grant made before the ſeverance is good. So if one grant his Manor (except one Acre,)and after grant this Acre by copy, this is not good, becauſe at the time of the grant it was not parcel of the Manor. *Co. upon Litt.* 324,325.*of Copyhold*, *f.* 82. *Dyer* 281.

Demiſed, or demiſable by Copy.

3. The things granted muſt be demiſed, or demiſable time out of mind, by Copy;

Copy; that is, it is either let by copy at the preſent, or capable of being let by copy, having been ſo let, and not by Leaſe, time out of mind. And if when it were laſt let, it was let by copy, and be now come into the Lord's hands, and he never let it for many years together by Deed or otherwiſe; this hindreth not but that it may be let by copy. And in this caſe it matters not how it came into the Lord's hands, whether by eſcheat, or forfeiture, or ſurrender: And yet if the Lord purchaſe the Copyhold of the Tenant, or it eſcheat, ſome have doubted if it be not extinct, and ſo not grantable again. But upon little reaſon as I conceive. *Calthrop, f.* 16. 86. 91. 90. *Co. upon Litt. f.* 58. *Calth.* 55. And if a Copyholder forfeit his Land by waſte, and a ſeiſure is awarded, but the Lord ſuffereth the Tenant to occupy the land twenty years together without receiving rent; he may after grant it by copy. But if after ſeiſure awarded a ſtranger enter, diſſeiſe him, and make a feoffment in Fee, and then the Lord re-enter and grant it by copy; this is not good by *Calthrop, f.* 25. *Quære*, for a diſſeiſing and feoffment cannot alter the nature of the

the Land. If a man will overthrow a Copyhold eſtate under pretence that it hath been let by Indenture, or otherwiſe than by Copy, he muſt ſhew it to be within the time of man's memory: For if it hath been let by Copy for fifty or ſixty years, it will hardly be admitted to the contrary. *Calth. f.* 19. 85.

The Heir of a Copyholder in Fee hath before his admiſſion ſuch an eſtate in the Land that he may ſurrender it, or bring treſpaſs; and if he die, his Heir ſhall have it by deſcent. *Dyer* 291. 302. *Co. of Copyhold*, 4. 21.

If a Copyholder ſurrender his Land, to the intent that a ſtranger may have a rent out of it; this is not a good Copyhold rent, by *Calthrop*, *f.* 92.

8. In reſpect of the Manor and Order of the grant. And of Grants, Surrenders, Preſentments and Admittances.

No Copyhold land can paſs from the Lord to his Tenant, nor from one Tenant to another, but by way of grant, or ſurrender in the Court of the Manor, according to the cuſtome of the place. And as touching this point theſe things are to be known.

1. In ſome grants a ſurrender is ſufficient without Preſentment or Admittance: In ſome an Admittance without a Surrender or Preſentment: In ſome a Sur-

Surrender and Admittance are both neceſſary: And in ſome a Surrender, Preſentment and Admittance are all neceſſary. As if the Copyholder ſurrender to the Lord's uſe, there needs no admittance. And if the Lord make a voluntary grant of a Copyhold in his hands, no ſurrender is needfull, but admittance onely. If the Copyholder ſurrender in Court to the uſe of a ſtranger, beſides the Surrender admittance is requiſite. And if the Surrender be made out of Court to the Lord himſelf, which the general cuſtome will warrant, or into the hands of the Bailiff, or of two of the Tenants,(which by ſpecial cuſtome onely is warrantable) in this caſe there muſt be, beſides the Surrender, a true Preſentment of the Surrender in Court by the ſame perſons into whoſe hands the Surrender was made,and an Admittance of the Lord according to the effect of the Surrender and Preſentment. *Co. of Copyhold. Sect.* 38.

2. A grant may be of Copyhold land in Fee-ſimple, Fee-tail, for life, or years, in poſſeſſion, or reverſion, as the cuſtome expreſly or interpretatively will warrant it. *Co. of Copyhold, Sect.*47. But the

Fee-ſimple, Tail, Life, Years.

the Lord without a cuſtome cannot grant a Copyhold in reverſion. 15 *Car. B. R.*

3. If the Lord, having Copyhold land in his hand, grant it by Deed or Fine, to hold at will, according to the cuſtome of the Manor, this is not good to make a Copyhold eſtate. *Calthrop, f.* 47.

Ancient rent. 4. In all good grants of Copyhold eſtates, it ſeems the ancient rent muſt be reſerved, not onely in quantity, but in all beneficial qualities. And therefore it is held, that if the ancient rent were in gold, and the new be in ſilver, or the old were payable at four days, and the new be payable at two days; theſe are not good Copyhold grants. But this (it ſeems) is to be underſtood of Copyholds of Inheritances, and Admittances into them. *Co. of Copyholds, fol.* 109, 110. *Calth. f.* 88, 89, 91.

Surrender. A Surrender is the giving up of the land by the Tenant to the Lord according to the cuſtome: and this is entred in this manner: To this Court came *A.* of *B.* and hath ſurrendred in the ſame Court one meſſuage, *&c.* into the hands of the Lord to the uſe of *C.* of *D.* and his heirs, or the heirs of his

his body iſſuing, or for term of his life, *&c.* and hereupon came the aforeſaid *C.* of *D.* and took of the Lord in the ſame Court the meſſuage aforeſaid, *&c.* To have and to hold to him and his heirs, or to him and the heirs of his body iſſuing, or to him for term of life, *&c.* at the will of the Lord according to cuſtome of the Manor, doing and paying therefore the rents, ſervices and cuſtoms therefore due, and accuſtomed; and he giveth to the Lord for his fine, *&c.* and hath done fealty to the Lord, *&c.* Herein are many things to be known.

1. This may be abſolute, or upon condition; and it may be rendring rent on condition of re-entry for not payment. *Coke* 4. 21. 30. And if he enter for the condition broken, it is in him as at the firſt without admiſſion.

2. It may be to the Lord himſelf, or his Steward or his Tenants, or his Reeve, or his Bailiff, as the cuſtome is. And it may be to the Lord out of Court: But it cannot be to the Steward out of Court without a ſpecial cuſtome to enable it. Cuſtome. *Mich.* 37 *&* 38 *Eliz. Bright's caſe.*

3. It is in ſome caſes neceſſary, and in ſome caſes not. See for this.

4 When

4. When it is neceſſary, it muſt be made, firſt by a Copyholder, and Admiſſion, otherwiſe it will not help. Secondly, it muſt be made to the Lord, that can make Copyhold eſtates, or ſome other to his uſe, as the cuſtome is. Thirdly, if it be out of Court, it muſt be preſented at the next Court, according to cuſtome. Fourthly, the Lord muſt admit accordingly; or elſe (as ſome ſay) the ſurrender is void. *Kytch.* 82. 60. *Co.* 4. 27. *Co.* 1. *par.* 61, 62. *Calthrop, f.* 97. Fifthly, this cannot well be made by any other word, but by the word *Surrender*. And therefore if it paſs in the Court by the word *give*, *grant*, *bargain*, or *ſell*, this will not paſs it, but the Heir of the Copyhold may avoid it. *Co. of Copyhold*, 103. And yet if a Copyholder come into the Court, and deſire the Lord to admit his ſon into his Copyhold, ſome think this is a good ſurrender to the uſe of his ſon. *Calthrop, f.* 75. But if the Tenant come to the Lord, and tell him that he is willing, for his ſon's preferment, that he ſhall have his Land preſently, and deſire the Lord's agreement, who doth ſo; it is ſaid this is no good Surrender. And yet if the Homage do after

Words of Surrender.

after preſent it for a ſurrender, it is more queſtionable. *Calth. f.* 59. If a Copyholder in the preſence of other Copyholders of the Manor ſay he is content to ſurrender his Copyhold to the uſe of *I. S.* this is not a good ſurrender. But if he ſay he doth ſurrender into the hands of the Lord to the uſe of *I.S.* if the Lord will thereunto agree; this is a good ſurrender, whether the Lord will or no. So if the Tenant reſign his intereſt in the Court into the Lord's hands, therewithall for him to doe what he will; it ſeems this is a good ſurrender. If the Copyholder ſay in Court, he will be no longer Tenant to the Lord, and this be recorded; this is no ſurrender. If a Copyholder for life take a new eſtate for life; this is a ſurrender of his firſt eſtate for life: But if the ſecond be by Deed, enquire. *Calth.* 59.

5. A ſurrender may be made of a Copyhold by Atturney, if there be no cuſtome in the place againſt it: It is not of neceſſity that the Copyholder be preſent in Court. But if this power be by ſpecial cuſtome, it cannot be done by Atturney. As if a Copyholder have a power to make a Leaſe for twenty years after

Atturney.

Cuſtome.

Infant. after his death; or an Infant have power to make a Leaſe at years of diſcretion, or a man may ſurrender out of Court to the Tenants: Theſe things cannot be done by Attorney. *Co. of Copyhold, 93. Co. 9. 76.*

6. If a Copyholder in Fee ſurrender to the uſe of himſelf for life, and after to the uſe of *R.* his ſon for life, and after to the uſe of his laſt Will; this is a good ſurrender, and the eſtate may be made accordingly. *Co. 4. 23.* But a ſurrender after a man's death to the uſe of a man's laſt Will, is not good. If a Copyholder in Fee ſurrender, to the intent that the Lord ſhall re-grant to him for his life, the remainder to his wife, till his ſon come to 21 years of age, and after to his ſon in tail; this is a good ſurrender, and is to be executed accordingly. *Dyer 251.* And if two Joyntenants be, and one ſurrender his part out of Court into the Lord's hands to the uſe of his laſt Will, and by his Will deviſeth his part to a ſtranger in Fee, and die, and at the next Court this is preſented; this is a good ſurrender, and by this the Joynture is ſevered. *Co. 1. part 59.*

Joyntenants.

7. If a ſurrender be to the Lord generally,

nerally, without ſaying to whoſe uſe; it is good enough. *Kytch.* 81.

8. If the Copyholder ſurrender to the uſe of another, and the Lord grant it to the *ceſtuy que uſe*, not naming the ſurrender; this is good enough by *Calthrop, f. 99.*

9. In a ſurrender it matters not whether the party to whoſe uſe it be, be preciſely expreſſed, if by any circumſtance he may be known. And therefore a ſurrender to the Archbiſhop of *Canterbury*, Mayor of *London*, next of his kin, or next of his bloud, his brother, his ſiſter, or his ſon, may be good, and it may be made certain by averment. So if it be to a man's wife, without naming of her, or to the high Sheriff of *Norfolk*. But a ſurrender to the uſe of one's couſin or friend, is void for incertainty. So if it be to the uſe of three or four of *Dale*, or to the uſe of *A. B.* or *C. D. Co.* 4. 29. *of Copyhold*, 96. Incertainty.

10. The ſurrender binds the Land immediately, ſo as the Lord cannot avoid or prevent the intention, nor prejudice him that is to have it by an Act that he can doe. And yet it is rather a manifeſting of the party's intention, than a paſſing The operation of a Surrender.

ſing of an intereſt. For till admittance the ſurrenderer is Tenant to the land, and ſhall receive the profits to his own uſe; and he muſt perform the ſervices. And yet he cannot paſs the land to any other, or make it ſubject to any incumbrance of his: Nor hath the Grantee any intereſt to puniſh treſpaſs, ſurrender, *&c.* And yet he cannot be defeated of it: And he may compell the Lord to admit him. *Co.4.26.29. of Copyhold, fol.* 106. If I make a ſurrender to the Lord, to the intent that he ſhall grant the land to *I. S.* and the Lord refuſe to grant the land to *I. S.* accordingly: In this caſe I may re-enter upon the Lord; but *I. S.* hath no remedy, as in caſe where the ſurrender is made to the uſe of *I. S.* by *Calth. f. 61.*

Countermand.

11. A ſurrender is not countermandable by the ſurrenderer. And yet if a Copyholder languiſhing in extremity ſurrendreth his land out of Court to the uſe of his couſin in conſideration of bloud, or to the uſe of his ſon in conſideration of natural love, and after recovers before Preſentment, haply this may be revoked. But if it be upon good conſideration, as for payment of debts, and ſo

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any ſum of money paid, though it be made out of Court, yet it is as binding as if it were made in the Court. *Co. of Copyhold*, 106.

The Preſentment made out of Court must be afterwards duly preſented at the Court, according to the cuſtome of the Manor. In which theſe things are to be known. Preſentment.

1. This Preſentment is the Information of men ſworn, to the Lord or Steward touching ſome things done out of Court.

2. This is either general (*i*) of all things, and by the whole Homage; or it is ſpecial (that is) by ſome Tenants, or of one, or of ſome things onely.

3. This by the general cuſtome is to be made the next Court after the ſurrender, but by the cuſtome of ſome Manors may be the ſecond or third Court after the ſurrender; and if it be not then preſented according to the cuſtome, it is void. *Co.* 1. *part* 61, 62. Cuſtome.

4. This alſo muſt be made in all things according to the ſurrender; otherwiſe it is not good. And therefore, if the ſurrender be conditional, and the preſentment abſolute, all is naught. And yet if the ſurrender be rightly

preſented, and the entry of the condition be omitted by the Steward, this upon proof may be holden. *Co.* 1. *part* 61, 62. *of Copyhold*, 107.

5. No death will hurt the Preſentment, and therefore if the Surrenderer die, yet the Preſentment may be made after his death. And if he to whoſe uſe the ſurrender is made die before Preſentment, the Preſentment may be made thereof after his death, and thereupon his heir ſhall be admitted. So if *I. S.* ſurrender to the uſe of *A.* for life, the remainder to *B.* and *I. S.* die, and *A.* die before the preſentment made, and after the Preſentment is made; in this caſe he in remainder ſhall be admitted. So if two ſurrender to the uſe of two joyntly, and one of them die before Preſentment; in this caſe the other ſhall be admitted to the whole. So likewiſe if the Tenants that take the ſurrender die, the Lord may notwithſtanding, upon proof of it, take in the Tenant by admittance. *Co.* 4. 39. *of Copyhold*, *Sect.* 40. *fol.* 107. *Co.* 4. 28, 29. And yet if a ſurrender be made to the Lord in the preſence of Tenants out of Court, and there the Lord doth grant it, but he dieth before this

this is preſented, or the Tenant admitted; this ſeemeth is not good. *Calthrop*, 46.

To the perfection of the Copyholder's eſtate, Admiſſion, as that without which no eſtate paſſeth by the ſurrender, is neceſſary. As touching which theſe things are to be known. Admittance upon Grant or Surrender.

1. This is the receiving of the Tenant into the Copyhold by the Lord or his Steward according to the cuſtome of the place. And it is thus entred: At this Court *I.S.* prayeth to be admitted, *&c.* whom the Lord by his Steward hath admitted, and whereupon he is admitted Tenant. *Co. of Copyhold*, 125. *Calthrop*, *f.* 62.

2. Some make it expreſs, and implied, (*i.*) by acceptance of rent, *&c. Cal. f.* 62. It is alſo either upon a voluntary Grant, or Surrender, or upon a Deſcent. *Co.* 1. 140.

3. It is a judicial act of the Lord's, and in caſe of a voluntary admittance, he is but an Inſtrument, and may be compelled according to the cuſtome to doe it; for he is not eſteemed as owner to any purpoſe, and therefore he cannot prejudice the ſurrender in any caſe. And therefore as to this Act of the Lord's Title

to the Manor, whether he have it by right or wrong, is not much considerable. *Co. of Copyhold*, 110.

4. This is necessary, for upon voluntary grants and surrenders, the Tenant hath nothing in the land till admittance, and upon dissents he is not perfect Tenant till his admittance. *Co. of Copyhold*, 112, 113. Yet in case of a surrender to the Lord's use no admittance is needfull; and where there is an implicite admittance, there needs no express admittance: And where Tenant in possession is admitted, he in the remainder on the same Copy need not to be admitted: Also the surviving Joyntenant, when they were both admitted at first, needs not to be admitted; and yet the heirs of a Copartner must be admitted into a moiety. *Calth. f.* 63, 64. And he that enters for a condition broken needs no admittance. *Calth. f.* 61. If a Copyholder for years die, the Executor needs not be admitted. So neither the husband of the wife Copyholder for years after her death. *Calth. f.* 95.

5. The Steward it is said may doe it out of Court any where within the Manor, except there be any custome against it.

it. *Kytch.* 82. *Co. of Copyhold*, 123.

6. The admiſſion muſt purſue the ſurrender: Yet in ſome caſes albeit it do differ from it, it is good enough. And therefore if the ſurrender be to the uſe of *I. S.* for life, or to the uſe of *I. S.* generally, and the Lord doth admit him in Fee; this is a good admittance for his life onely. And yet if the ſurrender be on condition, and the Lord omit the condition, it is all void. *Co. of Copyhold*, 112. So if the ſurrender be to the uſe of *I.D.* alone, and the new grant and admittance are to *I. D.* and *I. B.* this is good for *I.D.* and void for *I.B. Co. of Copyhold*, 111, 112. So if the ſurrender be reſerving 10*s.* and the admittance be reſerving 20*s.* it is good for the 10*s.* But if the ſurrender be reſerving 20*s.* and the admittance is reſerving 10*s.* it is all naught. The contrary ſeems to be deduced from the caſe of *Weſtwick*, 4. *Rep.* 28. *a, b.* So if the ſurrender be to the uſe of *I.S.* and the Lord admit *I.G.* and after admit *I.S.* it is ſaid in this caſe *I.S.* and *I.G.* ſhall have the land together. But if the ſurrender be to the uſe of *I. S.* alone, and the Lord admit *I. G.* alone; this is all void. *Co.* 4. 28. *of Copyhold*, 111.

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If the ſurrender be to the uſe of *A.* for life, the remainder to *B.* and *A.* is admitted; this is good for him in remainder. *Co.* 4. 23, 24.

7. The admiſſion muſt be according to the cuſtome: Yet if the cuſtome will warrant the woman's eſtate during widowhood onely, and the Lord admit for life, or the Lord admit not reſerving the ancient Rent in quantity or quality; this will not prejudice the heir, but that he may avoid it. *Co. of Copyhold*, 109.

Rent.

8. Admittance cannot make a bad eſtate good, nor change the cuſtome. *Kytch.* 82. 86. See more of this after at Fine, *Numb.* 9. 10.

Upon a Deſcent.

The heir of a Copyholder in Fee hath ſuch a poſſeſſion, and is ſuch a Tenant before admittance, that he may (paying the Lord his Fine, which may be afterwards) enter, take the profits, ſurrender or bring an action of Treſpaſs; and if he die, the heir ſhall have the Land, and there ſhall be a poſſeſſion of the brother upon his entry. And yet it hath been doubted, if a Copyhold deſcend to a feme-covert, and the husband take the profits, but ſuffer a Court-day to paſs without admittance, whether he ſhall be Tenant

nant by the Courteſie or not. *Dyer* 291, 292. *Calth.* 60. But in admittances upon a grant or ſurrender, as if one ſurrender to the Lord to the uſe of *I. S.* and the Lord grant it accordingly, it is otherwiſe; for there the Tenant hath nothing till admittance. But the heir of a Copyholder ſhall not be ſworn of the Homage, nor bring a Plaint in the nature of an Aſſize, till admittance. So that an admittance in this caſe is rather for the benefit of the Lord to help him to his Fine, than to ſtrengthen the Title of the heir. But the Heir is in moſt places bound under pain of forfeiture of his eſtate, or ſome other great penalty, to be admitted, and therefore he muſt be admitted. *Co.* 4. 23. *Dyer.* 291. *Co. of Copyhold*, 113, 114, 117. *Calthrop*, 62.

9. Upon every admittance there is Fealty due to the party admitting, by the party admitted; a thing inſeparable to the perſon, which cannot be done by Deputy: And yet if the Lord will accept it, or diſpenſe with it altogether, it is well enough. *Co. of Copyhold*, *fol.* 95. Fealty.

10. There is alſo a Fine due upon every admittance: See after. Fine.

There is in moſt places a Ceremony uſed

uſed in the paſſing of the lands. In ſome places there is the giving and taking of a turf and a twig; in ſome places the giving and taking of a glove, in ſome places the giving and taking of a ſtraw; in ſome places the giving and taking of the hand: But in moſt places the Ceremony is, by giving and taking of a rod. And albeit the grant or ſurrender may be good without this Ceremony, yet it is not ſafe to omit it. This the Copyholder that doth ſurrender doth uſe to give to the Steward or Bailiff to deliver over to the party to whoſe uſe the ſurrender is made, in the name of ſeiſing. And herein cuſtome of place is to be obſerved.

How Grants and Surrenders ſhall be taken

1. If a ſurrender be made to the Lord in general, without expreſſing to what uſe, it ſhall be taken to the Lord's uſe. *Kytch.* 81.

2. The ſame conſtruction (for the moſt part) which the Law maketh upon words in a Deed, it will make upon a Copy. And therefore it is that a Copyhold eſtate made to one and his heirs males or heirs females is accounted a Fee-ſimple, though it be otherwiſe in the King's grant. *Co.* 4. 29. *of Copyhold, f.* 139. So of a grant to one and to his bloud inheritable,

Fee ſimple.

heritable, or to a Mayor or Commonalty or other Corporation, where no eſtate is named. So if I ſurrender to one and his heirs, and he reciting this doth ſurrender it to my uſe in the ſame manner as I ſurrendered to him; ſo if I ſurrender to *I.S.* as large an eſtate as he hath in the Manor of *Dale*, and he hath a Fee-ſimple in that Manor: In all theſe caſes the Law will conſtrue it to be a Fee-ſimple. *Co.4.29.of Copyhold*, 132. If a Copyhold be ſurrendred to a man and to his ſeed heritable of the body, or to a man and to the heirs of him procreated, or to a man in Frank-marriage with his wife; in the firſt of theſe caſes an eſtate tail paſſeth without the word *heirs*, in the ſecond without the word *body*, and in the third without either. *Co.* as before. Fee-tail.

If a Copyhold be granted to a man in Fee-ſimple, or to a man and to his bloud for ever, or to him and his aſſigns for ever, without the word *heirs*; that is onely an eſtate for life. So if ſuch a grant had been to an Abbot and his heirs: So to *I. S.* and his heirs, ſo long as *I. D.* ſhall live. And yet if the grant be to *I. S.* and his heirs, ſo long as ſuch a tree ſhall grow in ſuch a ground; this ſhall For life.

ſhall be a Fee-ſimple. *Co.* as before. If this land be granted to two men, and to heirs, without *their*; by this no Inheritance is made, and they are Joyntenants for life onely. Yet if it be granted to *I. S.* and heirs, without *his*; hereby *I. S.* hath a Fee ſimple, and not an eſtate tail. And if it be granted to a man and to his children of the body; this is no eſtate tail for lack of the word [*heirs*.] *Co.* as before.

Joyntenants.

If the Grant be to a man and the iſſues males of his body, by this is made an eſtate for life.

If this Land be granted to three, to have ſucceſſively; by this they are Joyntenants, and ſhall take together, unleſs the cuſtome (as in moſt places it doth) do otherwiſe conſtrue it. *Co.* as before.

If there be Copyholder for life, the remainder to another in Fee, and the Copyholder for life doth ſurrender to the uſe of another in Fee, and the Lord admit accordingly; by this there paſſeth an eſtate for life onely. *Co. of Copyhold, f.* 91. So if the ſurrender be to the uſe of a ſtranger for life, and the Lord grant in Fee; this is good for life onely. *Calth. f.* 61. So if the Lord grant a Copyhold

pyhold for life, where an eſtate in Fee is warrantable; and this Grantee doth ſurrender in Fee to the uſe of a ſtranger, and the Lord admit him accordingly; by this, it is ſaid, the Fee doth not paſs. *Co. of Copyhold, f.* 92. If the ſurrender be to the uſe of a laſt Will, and the ſurrender deviſeth it to two, and one of them onely is admitted according to the Will; by this both of them ſhall have it. *Co. of Copyhold*, 98.

If one Copyhold be between two Joyntenants in Fee, and one of them ſurrender his part out of Court to the Lord according to the cuſtome, to the uſe of his laſt Will, by which he doth deviſe it to the uſe of a ſtranger in Fee, and dieth and this is preſented at the next Court: hereby the Joynture is ſevered, and the Deviſee muſt be admitted to a Moiety of the Lands. *Co. upon Litt.* 59. If a Copyholder ſurrender to the uſe of his wife for life, the remainder to the right heirs of the husband and wife; the wife dies, and the husband doth ſurvive: in this caſe, if he have no iſſue by his wife, his heir ſhall have it, by the opinion of *Calthrop, f.* 82. And yet if the wife have iſſue by another husband, it is doubted. Deſcent.

And

And it is ſaid, that the husband and his heirs ſhall have the land: Yet if the husband had firſt two ſons, the heirs of the husband and the heirs of the wife ſhall have the land in common, after the deceaſe of the wife. *Calth. fol.* 83. If land be given for life, the remainder to two men and their heirs; in this caſe they cannot have one heir: And therefore if the Tenant for life die before them in remainder, they ſhall be Joyntenants. But if either of them be alive when the Tenant for life dies, then the heirs of them in remainder ſhall hold in common. *Calthrop, fol.* 84.

If a Copyhold be ſurrendred to the uſe of *I. S.* and his heirs, till he marry *A. G.* and then to the uſe of them two in ſpecial tail; this is good and ſhall enure accordingly. *Calth. f.* 22.

If a Copyholder ſurrender to the uſe of a ſtranger, in conſideration that the ſtranger ſhall marry his daughter before ſuch a day; in this caſe, if the marriage ſucceed not, the ſtranger ſhall take nothing by the ſurrender. But if the conſideration be, that the ſtranger ſhall pay ſuch a ſum of money at ſuch a day; albeit the money be not paid, yet the

the ſurrender is good. *Calthrop, fol.* 37.

If the Copyholder in conſideration of 20*l.* to be paid by *I. S.* doth make a ſurrender of his Land to *N. R.* this ſurrender ſhall be to the uſe of *I. S.* and not to the uſe of *N. R.* But if in the Copy the uſe be expreſſed to *N. R.* and no conſideration mentioned, the uſe expreſſed ſhall ſtand againſt any conſideration to be averred. *Calth. f.* 137.

If a Copyholder ſurrender his Land to the uſe of *I. S.* ſo that *I. S.* pay 20*l.* ſuch a day if he pleaſe; this is an abſolute, not a conditional ſurrender. *Calthrop, f.* 39.

9. In reſpect of the payment of the Fine: and of a Fine.

The payment of the Fine by the Tenant is neceſſary to the continuance, but not to the creation of the eſtate, for the eſtate is made perfect without the Fine-payment. But for the more full underſtanding hereof, theſe things are to be known.

1. A Fine is a ſum of money to be paid to the Lord for an income into the Lands.

2. This in ſome places is certain, and in other places is uncertain: And where it is certain, the Lord cannot increaſe it.

3. By general cuſtome this is to be paid. Cuſtome

Admittances.

paid onely upon admittance; but it may be also by special custome upon licences granted to demise by Indenture.

4. The Fine is to be paid upon admittances in these Cases following. (*viz.*) Where the Lord hath a Copyhold come into his hands, and he makes a voluntary admittance; and where a Copyholder doth surrender to the use of a stranger, and the Lord doth admit him to whose use the surrender is made; and where a Copyhold of Inheritance descendeth, and the heir is to be admitted; so where the wife is to come in as Tenant in Dower, or the husband as Tenant by the courtesie, and so also where one doth enter as a general or special occupant; and so also where the Copyhold Lands of a bankrupt are to be sold upon the *Stat.* of 13. *Eliz.* 1. In all these cases the Tenant is to be admitted, and to pay a Fine. So also if a Copyhold be surrendred to the use of one for life, the remainder to the use of another, and the Tenant for life die; he in remainder must pay Fine upon his admittance. So where the *Husband.* of the grant is successive, and one of them die, the next must be admitted and pay Fine. So

two Copartners or Tenants in common be, and one die, and the whole descend to the other; there must be Fine upon the admittance. But if there be two Joyntenants, and one of them die, and the other come to the whole by Survivourship; or one take a wife, a Copyholder in Fee, or marry with the tearmer of a Copyholder; or a Copyholder be disseised, and then enter upon the disseisor, or recover by plaint in the nature of an Assise; or a Copyholder in Fee surrender for life, reserving the reversion, and the Lesse for life dieth; or a Copyhold be granted on condition, and the condition is broken, and the Grantor reenters; or the Lord enter upon a Villein, that hath purchased a Copyhold; or the Bailiff is by customs to have the Wardship of an Infant: In all these cases there needs no admittance, and therefore no Fine is to be paid. And yet if a Copyholder die seised, and a stranger abateth, and the Heir recovereth by plaint in the nature of an Assise of Mortdancestor; upon this recovery an admittance is to be made; and therefore a Fine is to be made. *Co. of Copyhold, Sect. 36. in fine.*

5. If the Lord use to take for his Fine sometimes 2*d.* sometimes 4*d.* sometimes 6*d.* an Acre; this is so incertain, that it shall be said to be arbitrary. *Coltb. f.* 25.

10. In respect of entry in the Rolls of the Court.

The Steward of the Court must take care to record and inroll all the conveyance of estates. For some have held, that if the Lord in open Court grant a Copyhold estate, and no entry is made hereof in the Court Rolls, that the grant is not good, and that no collateral proof will make it good. *Calthrop, f.* 47. But if the Tenant have no Copy, or lose his Copy, the Roll of the Court is a good evidence. And if these Rolls be lost, it is thought clearly it may be supplied by proof. *Calthrop, f.* 47.

By-laws.

And yet if By-laws be made and entred upon the Rolls and the Rolls be lost, the By-laws are gone: Otherwise it is of customs and Privileges inrolled and lost. *Idem.*

Customs.

11 In respect of custome and of Customs.

That the grant made by Copy of Court Roll may be good, it must be made according to the Custome of the Manor, and that custome must be according to Law: But as touching customs these things are to be known.

Custome what.

1. A Custome is a Law or right not written, which being established by long use

uſe, and the conſent of our Anceſtors, hath been and is daily practiſed.

2. Though Cuſtome, Preſcription, Uſage and Limitation be much of affinity, and one of them be taken for another, yet they differ much; for,

1. Cuſtome can have no beginning ſince man's memory, but Preſcription may. Preſcription.

2. Cuſtome touching many men in common, that they by continuance of time have gotten a right; and this is alledged thus, That in ſuch a place is ſuch a Cuſtome: But Preſcription toucheth this or that man, when he by continuance of time hath obtained a right againſt another man; and this is perſonal, and alledged in the name of ſome perſon in certain thus, That he and his Anceſtors, and thoſe whoſe eſtates he hath, time out of mind, &c.

3. Uſage is the effitient cauſe or life of both, for both loſe their being if Uſage fail. *Calthrop, f. 17. Co. of Copyholds, Sect. 33.* Uſage.

4. Limitation is, where a right may be obtained by reaſon of a non-claim by the ſpace of a certain number of years, differing in Account of time from Cuſtome and Preſcription. Limitation.

1. The measure whereof is so long as man's memory cannot remember the contrary, (that is) that no man alive hath heard or knoweth any thing to the contrary. But limitation hath a certain time of beginning and end.

2. Customs are either general, as which are part of the common Law used in all places alike; or particular, which are used only in some places, as in *Kent*, *North Wales*, *Gavelkind*, *Burrough English*. And these again are either disallowing what general customs do allow: as that the Copyholder shall not sell his land to a stranger, and compell the Lord to admit him, till he hath first offered it to the next of bloud, or next of kin, or next neighbour from the sun-rising, who giving as much as the party to whom the surrender is made shall have it. Or else they be such as do allow what general customs do disallow: As for a Copyholder to let his land by Deed for a longer time than a year without licence, which by the custome of some Manors he may do. Custome from certain cause reasonable used takes away the common Law. *Co. of Copyhold, Bell. 33.*

Consuetudo ex certa causa rationabili usitata privat communem legem.

To

To know what cuſtoms are good and what not, theſe rules muſt firſt be taken. Firſt, Cuſtoms and Preſcriptions muſt be reaſonable. 2 *Ed.* 4. 24. Secondly, they muſt be according to common right. 42 *Ed.* 3, 4. Thirdly, muſt be upon good conſideration. 5 *Hen.* 7. 9. Fourthly, they muſt be compulſory, not voluntary. 42 *Ed.* 3. *Avowry* 66. Fifthly, they muſt be certain. 13 *Ed.* 3. 4. Sixthly, they muſt be beneficial to them that claim them. 31 *Ed.* 3. *Preſcription* 40, 28. Seventhly, it cannot help a man to that which is gained onely by matter of Record. Eighthly, it cannot extend to things newly created. Ninthly, they need not be uſed daily and hourly, but according to time and occaſion. *Calthrop*, 22. 21. Tenthly, *Non-uſer*, as if the Lord hath been uſed to have work-days, and hath not had them for twenty years together, this will not hurt the cuſtome. *Calthrop f.* 25. Eleventhly, cuſtome may oppoſe the Common Law, but not a Statute Law. *Calth.* 87.

Hence it is that theſe following cuſtoms are not allowed to be good. (*viz.*) That no Tenant ſhall uſe his Common by putting in of his Cattel in fields ſown For Common.

sown after severance of his Corn, till the Lord put in his Cattel; for he may chuse if he will to put in at all.

To have a Fine for a trespass, or other cause.

That if any man's beast be taken damage feasant upon the Lord's Demesnes, he may keep them till the owner give him such amends as he shall please: For this is to make him judge in his own case. And yet if the custome be, that if the Copyholder trespass him, and it be presented at Court, that this shall be a forfeiture, it is good. *Calthrop, f.* 29.

That every Copyholder shall pay the Lord a certain sum of money for every Court he keeps. Or that he shall never keep a Court till when it please him. For this Court being to doe Justice must be *gratis*. And yet such a custome alledged to be for the keeping an extraordinary Court is good.

That every stranger that shall make a Pound-breach shall pay 1*l.* And yet it is held that a custome lay, that every Tenant which shall make a Pound-breach shall forfeit 5*l.* *Calthrop, f.* 31.

That every one that rides through the King's high way within the Manor must pay the Lord such a sum of money. And yet if it be for every one that

that paſſeth over ſuch a Bridge within the Manor which the Lord doth maintain; it is good enough.

That every Copyholder that doth marry or ſhall marry his daughter, ſhall pay ſo much to the Lord for a Fine. And yet where the cuſtome doth admit the husband Tenant by the Courteſie, and wife to be Tenant in Dower, or to have widows eſtate of the Copyhold, that in theſe caſes they ſhall pay a Fine, is a good cuſtome.

That every Copyholder ſhall hold his land without paying any rent or ſervice to the Lord. And yet it is held, that a good cuſtome to preſcribe by fealty for all manner of ſervices is held good. *Calthrop*, 29. So a cuſtome may be to exempt one Tenant from that which all the reſt of the Tenants do bear, and good. *Calthrop*, *f.* 77.

That every Copyholder ſhall give to the Lord ſo much in the time of war every month to bear his charges. And yet if it be that he ſhall pay ſo much to the Lord for this purpoſe, it is good. The reaſon of the difference is, becauſe a payment is compulſory, a gift voluntary. Incertainty.

That

That when one Copyholder dieth, another of the Copyholders (and say not which) shall hold the land for the year following. And yet if it be, that if a Copyholder die without heir, the eldest Tenant of that name within the Manor shall have the Land; this is good. *Calth. f.* 31.

For Fine. That the Lord shall have for his Fine 2*d.* rent an Acre, and when he please 4*d.* an Acre. And yet haply if the Lord prescribe to have 2*d.* an Acre rent in time of peace, and 4*d.* in time of war this may be certain enough good.

To do waste. That a Copyholder shall cut down what timber he pleaseth, fire, pull down or destroy the houses, or let them fall. And yet haply a custome that the Tenant shall cut down more than ordinary, or that the Tenant shall have necessary fireboot, *&c.* that he may sell underwoods and shrowds, may be good.

To pay a Fine. That every Tenant shall pay a Fine at every alienation of the Lord. And yet if it be, that every Tenant shall pay a reasonable Fine at the Lord's death; or that a Fine shall be paid at every death or alienation of the Tenant; or that the Lord shall admit without Fine, if the

usage

uſage have been ſo, *Cuſtbrop, fol.* 40. theſe and the like cuſtoms are allowed to be good: But theſe following cuſtoms are diſallowed. (*viz.*)

That the wife of a Copyholder ſhall during her life or widows eſtate hold all the Land.

That the Tenant ſhall have Common in the Lord's waſtes. To have Common.

That if he that hath right claim not the Land within a year and a day after the Anceſtor's death, he ſhall loſe it: And yet this will not bind an Infant.

That the Lord may grant for one, two or three lives in reverſion.

That a ſurrender may be made to the Bailiff or Reeve, or two or more Tenants out of Court. To make a Surrender.

That the ſurrender made by the Tenant in tail ſhall bar the iſſue in tail.

That the Lord may keep his Court at another of his Manors.

That the Lord's Steward or Bailiff may grant Copyhold eſtates to the Tenants.

That a feme Covert may grant her Copyhold eſtate to her husband by ſurrender.

That an Infant of years of diſcretion may ſurrender.

That

That the new Tenant ſhall pay a Fine to the Lord, as he can agree, upon his admittance.

That Proclamations be made three Courts one after another, and if the heir come not, and pay his Fine for admittance, he ſhall loſe the Land. *M. 7. Jac. B. R. Lyford's caſe.*

That the Copyholder may let for longer time than one year without Licence.

To ſurrender out of Court.

That an Inheritance ſhall paſs by ſurrender in the Lord's Court without his leave, and be delivered over by the Bailiff to the Feoffee according to the Deed to be inrolled in Court.

If the Lord preſcribe, that whoſoever take a diſtreſs within this Manor, he muſt put it in his Pound for a time; this is not good, for it is no benefit to him. But if he add farther, that the Lord is to have ſo much for the impounding, it is good.

Preſcription.

The Lord may not preſcribe to have Felons goods, Fugitives goods, Deodands, becauſe they cannot be forfeit till they appear of Record; But Waifs, Eſtrays, Wrecks, and ſuch like things, may be gained to the Lord by preſcription, for

for they may be gained by uſage without matter of Record.

That the wife of the Copyholder ſhall be Tenant in Dower, husband Tenant by the courteſie, (an Enquiry may as well be made of this, as of entailing Copyholds; ſince this Tenant by *Elegit*, &c. commenced by Statute which is within the memory of man) or a ſtranger Tenant by Statute Merchant (and ſo no cuſtome can be of it. *Co. of Copyhold, Sect.* 47.) or ſtaple of the Land in the hand of the Copyholder, are good cuſtoms *Co. of Copyhold*, 136.

That the Tenant may make a Leaſe for twenty years after his death, is a good cuſtome. *Co. of Copyhold, f.* 93. To make Leaſes.

That the Tenant ſhall pay the Lord every fourth year the double rent, and every ſixth year a half year's rent, is a good cuſtome: So that when they ſow their land, they ſhall pay their rent in corn, and when they feed it, in money, is a good cuſtome. *Calthrop, f.* 25. To pay Rent.

All cuſtoms, eſpecially ſuch as are in derogation of the common Law, are taken ſtrictly, but not literally. And therefore where a cuſtome is that a man may grant in Fee, by this he may grant In How they ſhall be taken. To make eſtates.

in tail or for life. So where the cuſtome is, that the Lord may grant for life; by this he may grant during widowhood. He who may doe what is more, may doe what is leſs; not convertible. But where the cuſtome is, that the wife of the firſt taker ſhall have her widows eſtate, by this the wife of the ſecond ſhall not have it. *Coke* 4. 30. *of Copyhold*, 70. 77.

Cui licet quod majus, non debet quod minus eſt non licere; ſed non è converſo.

If the cuſtome be, that the Copyhold land may be leaſed by the Lord Surveyor, or deputy Surveyor; the Lord cannot by his Teſtament appoint and authorize one to keep Courts and make eſtates. *Co.* 4. 30. *of Copyhold*, 35.

To pay money.

If there be a cuſtome that for every houſe in the Manor two ſhillings Fine ſhall be paid: If the Tenant maketh one houſe into two houſes, or maketh a new houſe, no Fine ſhall be paid for theſe new houſes.

Eſtovers.

So if I have eſtovers appendant to my houſe, and I build a new houſe, I ſhall not have eſtovers to this new houſe. But if I onely change the rooms, my eſtovers do continue. So it is of a water-courſe to a Fulling-mill, converted to a Corn-mill, or of a light in a Hall, converted to a Parlour. *Co.* 4. 32. *on Litt. Sect.* 74.

The

The proof of these Customs, and due Precedent, as to prove Leases, may be made for longer time than a year: to shew one Lease, is no proof of a custome. Proof of it.

In custome there is *User*, *i. e.* when according to time and occasion it is used. Secondly, *Non-user*, *i. e.* when for want of time and occasion, through negligence or forgetfulness, it is not used; this will not hurt the custome. And therefore if there be a custome that the Tenants shall doe work for the Lord yearly, and it hath not been done for divers years, yet the custome remaineth, if any man living can remember it hath been done. And so it is if one have a Market one day a week, and do not keep it. Thirdly, if the Tenants use to pay the Lord, when they sow their Land, rent-corn, and when they feed it, money, or to pay the Lord every fourth year a double rent, and every sixth year a half rent: This is a good *Interuser*. Fourthly, *Abuser* is, where the Tenant doth put in other cattel or more cattel in the Lord's soil than he ought: this doth not destroy the custome, but this is finable at the Lord's Court. And For payment of rent.

so

so it is if the Lord have a Fair or Market one day of the week, and he keep it another day; this is not a forfeiture of the custome. And yet if he have it two days, and keep it three days, this is held to be a forfeiture. *Calth. f.* 43, 44, 45. See more to this in the next question.

CHAP. XX.

When and how a Copyhold shall be said to be destroyed or suspended.

FOR the clearing of this point, these things are to be known. 1. The Copyhold is destroyed and gone in all these following cases. 2. When the Copyhold is either by Act of Law, or Act of the Lord, or the Copyholder, or Tenant, become not demisable by Copy. As for example, if the Lord by Fine or Feoffment, or otherwise by Deed, grant the reversion of one or some of the Copyhold Tenements, of the Manor in Fee, or for Lease to me, by this it is gone. And in this case also it is so gone, that no acceptance of Rent or admittance of the Tenant after will revive it. But if the Lord grant the reversion of all his Copy-

hold

hold Tenements; by this the Manor is not deſtroyed. *Co.* 4. 27. *of Copyhold*, 176. Or if when the Copyhold is come into the Lord's hands, he do by Fine, Feoffment, or Recovery, paſs away the Fee, or make a Leaſe for life or years of the Land, or ſuffer it to be extended on a Statute or *Elegit* of his own acknowledgment; or if after it come into the Lord's hands he die, and it be after aſſigned to his wife in dower; by this in theſe caſes the cuſtome is deſtroyed for this Land. *Co.* 2. 17. *Calth.* 91.

Or if the Lord, or his Leſſee of the Manor, doth make a Leaſe of the Copyhold to the Copyholder, or make a Feoffment abſolute or conditional to the Copyholder of the Copyhold, the which he doth accept; or the Lord make a Leaſe of the Manor to the Tenant for life, the Remainder to a Stranger; by either of theſe alſo it is gone. *Dyer* 114. *Kytch.* 82. Or (as ſome ſay) if the Copyhold come in to the Lord's hand by eſcheat, or the Lord purchaſe the Copyhold: but this opinion is diſallowed. *Calthrop*, 90. 88: 91. But if the Lord grant part of the Copyholds onely, by this it is clear the Manor is gone, and

cuſtome deſtroyed. *Adjudge 29 Eliz. Calth. 99.* And where the Copyhold is extinguiſhed, the Land can never be afterward granted by Copy.

If there be a Leaſe for years of the Manor, and one of the Copyholders doth purchaſe the Reverſion in Fee; by this the Copyhold is deſtroyed, and the Leſſee of the Manor ſhall out the Copyholder, and have the Land for a time. *Calth. f. 97.*

And yet if the Copyholder accepts a Leaſe for years of the Manor, or marry with the wife of the Lord; by this the Copyhold is not extinct, but it is ſuſpended. And if a Copyhold be in hand, and the Lord alien by Fine or Feoffment, or make a Leaſe of the Manor for years; by this it is extinct.

And if a Copyhold be granted to three for their lives, and the firſt of them take an Eſtate by Deed, with livery of ſeiſin from the Lord; by this the Copyhold for that life is at leaſt ſuſpended. *Dyer. 30. Co. 4. 31.* But the Copyhold is neither extinct nor ſuſpended in theſe following caſes: (*viz.*) where the Copyhold is ſurrendred, forfeit, or doth eſcheat into the Lord's hands, and the

Lord

Lord doth keep it in his own hands, or let it at will onely; or the Tenant, having licence from the Lord, make a leaſe to a ſtranger according to his licence, or without licence make a leaſe to the Lord. *Co.* 4. 30. So where the impediment is tortious, as if the Lord be diſſeiſed, and the diſſeiſor die ſeiſed; or the Land be recovered by falſe verdict, or erroneous judgment, and afterward is recontinued. What is done againſt Law is reputed not done. The impediment which takes not its effect from the Law is invalid. *Co.* 4. 31. *of Copyhold*, 178.

Quod contra legem fit pro infecto habetur.

Non valet impedimentum quod de jure non ſortitur effectum.

But in all the caſes before, where the Copyhold is gone by grant of the reverſion, it is not ſo gone, but that the Tenant ſhall hold his Eſtate ſtill, and ſubject to forfeiture as before; and he muſt ſtill perform the ſame ſervices (Suit of Court excepted) as before; and the cuſtoms incident to the Land, and if it be Burrow Engliſh, or Gavelkind, continue ſtill. But fine upon alienation and admittance is gone, and the Tenant cannot now ſurrender, or paſs his Eſtate by any way but by a Decree of Chancery: And this will bind the perſon onely. *Co.* 4. 25. *of Copyhold*, 176.

CHAP. XXI.

What Acts amount to the forfeiture of a Copyhold-estate, and how.

OF Acts which amount to a forfeiture, some are forfeitures in the act, and in the instant that they are done; such are offences apparent and notorious, of which the Lord by common presumption cannot but have notice: Some are no forfeitures, till a presentment be made thereof. Other Acts there are which are offences, but are not such as cause a forfeiture, yet are they finable to the Lord.

Of the first sort are these following Acts.

1. By not coming in to take his Land.

Admission.

If by special custome upon the descent of any Copyhold of Inheritance the Heir be bound upon three solemn Proclamations, at three several Courts, to come in and be admitted into his Copyhold, and he cometh not, this is a forfeiture if he do not come; this is in the Act a forfeiture. *Calthrop, f. 69. Co. of Copyhold,* 164. And yet if a Copyholder enter before admittance, this is no forfeiture,

feiture, without a ſpecial cuſtome for it.

So if a Copyholder be ſufficiently warned to appear at the Court Baron of the Manor, and he wilfully make default, having no excuſe for his abſence. And this offence is greater, if he do wilfully refuſe to come; or being come, to be ſworn of the homage; or being ſworn to preſent, if he depart without preſentment: as if thirteen be ſworn, and twelve preſent, and one refuſe. But if a Copyholder be hindred by ſickneſs, waters, debts, or the like, his default is no forfeiture: but otherwiſe it is in the Act a forfeiture. And yet ſome ſay this muſt firſt be preſented e'er the Lord can take advantage of the forfeiture. *Dyer* 211. 31. *Calth. f.* 67. *Dyer* 233. 9 *H.* 6. 44. So if he ſwear in Court he is none of the Lord's Copyholders, or being required to be ſworn of the homage, refuſe it for that cauſe; this it ſeems is a forfeiture, and that without preſentment.

2. By denying of Suit of Court.

So if the Steward ſhew a Roll whereby the Tenant is proved a Copyholder, and the Tenant ſay he is a Freeholder, and ſhew a deed to that purpoſe, and tear in pieces the Court-Roll; this is ſuch a forfeiture. And yet if there be a

doubt in it, and the Copyholder doe his ſervice with a proteſtation, that it may be recorded as it ſhall fall out; this is no forfeiture, nor finable. So if he ſpeak unreverent words of the Lord in the Court, as if he ſay, that he doth exact and extort unreaſonable fines, and undue ſervices; this is onely finable. So if he ſay that he will deviſe a means to be no longer his Tenant; this is neither a forfeiture nor finable.

3. By non-payment of the Fine.

Where the fine upon admittance is certain, if after admittance it be upon demand denied, or not paid; or where the fine is uncertain, and the Lord hath ſet it reaſonable; and the Tenant doth not pay it in reaſonable time after demand; in theſe caſes it ſeems there is a forfeiture. But it is no forfeiture in him to deny the payment, if it be ſet unreaſonable. And of this point the Judges, and not the Jury, ſhall be Judge. And yet of this alſo ſome hold there muſt be a preſentment, before there can be a forfeiture. *Co.* 4. 27. 28. *Calthrop, f.* 67. *Trin.* 4 *Jac. B. R.*

4. By bringing a Replevin.

If the Copyholder ſue a Replevin againſt the Lord diſtraining for his rent or ſervice; this is ſuch a forfeiture. *Co.*

of

of Copyhold, 165. So if the Lord bring treſpaſs againſt the Tenant, and he plead it his free-hold. And yet if the Copyholder, doubting of the truth of it, whether it be due or not, intreateth of the Lord that the Jury may enquire thereof; this is no forfeiture. 5. By pleading.

If a Copyholder for life ſuffer a recovery by plaint in the Lord's Court, as Copyholder of Inheritance; this is ſaid to be ſuch a forfeiture. And yet if ſuch a Copyholder ſurrender in fee, this is no forfeiture. So if Copyholders in fee make partition, this is no forfeiture. *Calthrop*, 98. 6. By ſuffering a Recovery.

If the Lord demand his rent of the Copyholder, and he deny to pay it, or he delay to pay it without the Lord's agreement; or if the Lord come upon the Land, and there continue demanding of the Rent, and it is not paid; this is ſuch a forfeiture: For the Copyholder knowing the time of payment, is to provide it againſt that time. And this alſo by ſpecial cuſtome may be a forfeiture before the admittance of the Tenant. *Co. of Copyhold*, 167. *M.* 7 *Jac. B.R.* 7. By not paying Rent.

Waſte in a Copyholder is either voluntary or permiſſive. If a Copyholder 8. By doing waſte.

commit voluntary waſte, as if he pluck down any ancient built houſe, or build a new Houſe, and then pull it down again; or plow up Meadow-ground, ſo that the ground is thereby made worſe; or cut more Timber than there is need of; or being cut doth miſimploy it, or doth not imploy it in due time; or lop the Trees and ſell the loppings; or cut down any Fruit-trees for fewel, having other wood ſufficient; or behead trees, or break the boughs, ſo as the bodies do thereby putrefie: all theſe things are forfeitures. And yet the cutting and carrying away of ſhrowds or underwood is no forfeiture, without a ſpecial cuſtome to make it ſo.

So if the Tenant have a grant of the Trees, or a Licence to cut down Trees; in this caſe it is no forfeiture: but otherwiſe in theſe and ſuch like caſes, without a ſpecial cuſtome (which ruleth much herein) to enable the Act, it is a forfeiture. *9 H.4. 12. Calth. f. 68. A. 36. 37 Eliz. Co. B. Co. 4. 27. of Copyhold, 168. Calth. 98. Co. 1. 63.* And theſe things will be a forfeiture when they be done by the Leſſee at will of a Copyholder, and the Copyholder ſhall have his remedy

medy over againſt the Tenant at will by action of the caſe. So alſo it is for permiſſive waſte: as if the Copyholder ſuffer his houſe to decay or fall for want of repair, or ſuffer his Meadows or Lands by his ill husbandry to be ſpoiled. And yet ſome are of another opinion in ſome of the caſes, for they hold, that many of theſe are no forfeitures till there be a preſentment of them. And herein they diſtinguiſh between voluntary and involuntary Acts; and Acts that lie in non-feaſance, which they ſay muſt be preſented, and Acts that lie in miſ-feaſance, which need no preſentment. *Calth. f.* 68.

Of the next ſort, whereof the Lord muſt have a preſentment before he can take advantage of the forfeiture, are theſe things following, (*viz.*) where the Copyholder doth commit Treaſon or Felony, and be thereof attaint; or be convict for Recuſancy, or be outlawed, or be Excommunicate, or goeth about in any other Court to entitle the Lord to the Copyhold. Or if he alien his Copyhold Land by Fine, Deed, or make a Leaſe of it without Licence of the Lord. And yet this Leaſe as to all others but the

9. By committing of Treaſon, Felony, &c.

10. By making a Leaſe, &c. Licence.

the Lord himſelf is good. But in caſe where the cuſtome will warrant a Leaſe for a year, there is no forfeiture, whether it be by word or writing: for without a cuſtome of enablement, it is held, that a Copyholder by the Common-law cannot make a Leaſe for a year. 35 *Eliz. ch.* 2. *Trin.* 3 *Jac. Curia, Co.* 4. 27. *Litt. Sect.* 74. If the Copyholder have a Licence to let for ten years, and he let for twenty years; this is a forfeiture. Yet if the Copyholder for life ſurrender to the Lord to the uſe of another in fee, or make a feoffment in fee, or Leaſe for life, but doth not make a Livery of Seiſin upon it, or not make a good Livery upon it, or doth bargain and ſell the Land without Inrollment of the Deed; none of theſe is a forfeiture. *Trin.* 36 *Eliz.* 2. *Co. B. Co.* 4. 23. 1. *part f.* 495. *of Copyhold,* 169.

So if the Copyholder have Copyhold Lands and other Lands in *Dale*, and he bargain and ſell all his Lands in *Dale*, and the Deed is inrolled; by this the Free-land onely paſſeth; *ergo* this is no forfeiture. But if he have no Free-land, there it is a forfeiture. And all theſe offences

offences are the greater when they are willingly done.

Of the third ſort of offences are theſe following: (*viz.*) where the Copyholder being of the Grand Jury, doth indict the Lord, or give evidence againſt him; or being a Bailiff, if he arreſt him or ſue him at Law, (except it be in the caſe of a Replevin before.) Neither of theſe Acts is a forfeiture, nor is it finable. So neither if the Copyholder diſſeiſe the Lord of any other Land. *Calthrop, f.* 68, 91.

So if the Copyholder abuſe the Lord in words, or abuſe the Lord's Common with his Cattel, or rail upon another Copyholder in the Court, or uſe any ſuch like words or deeds of contempt, that do not tend to the Lord's diſinheritance; theſe things are at the moſt but finable. *Calthrop, f.* 45.

CHAP.

CHAP. XXII.

Who may forfeit: and how.

IN anſwer to this queſtion, theſe things are to be known.

Non compos mentis. 1. A Copyholder of an unſound memory, an Idiot, or a Lunatick, cannot forfeit his Eſtate.

Infant. 2. An Infant under fourteen years of age cannot forfeit, for he is till then to be in ward to the next of kin, or Bailiff, according to the cuſtome of the place. Nor can he forfeit by any negligent or ignorant offence, as non-claim, not coming to be admitted, not repairing, nor malefeaſans. Thus if he bring a Replevin againſt the Lord, alien by Deed, or the like Acts. But by a voluntary waſte, or obſtinate denial of Rent, an Infant may commit a forfeiture. And ſo he may by doing a felony. *Co. of Copyholds*, 172.

Feme covert. 3. A feme covert cannot, by any Act ſhe can doe alone, forfeit her eſtate; but her husband, or ſhe with the conſent of her husband, may. Yet if a ſtranger with the wife's conſent without the conſent of

of her husband commit a waſte; this is not a forfeiture. *Co.* 4. 27. *of Copyhold*, 172, 173.

4. The Guardian of a Copyholder may forfeit his Wardſhip, but he cannot forfeit the Copyhold. *Co. of Copyhold*, 172, 173. Guardian.

5. *Ceſtuy que uſe* of a Copyhold cannot forfeit it. *Ceſtuy que uſe.*

6. A Diſſeiſor of a Copyhold cannot forfeit it. Diſſeiſor.

7. He that doth forfeit, can forfeit but his own part: and therefore if there be two Joyntenants, and one of them commit a forfeiture; Leaſe for life, the remainder for life, or in Fee; and the firſt Tenant for life commit a forfeiture, or purchaſe the Manor, and extinguiſh the Copyhold; yet the remainder is not hurt.

If the husband and wife be joynt Copyholders of the purchace of the huſband during coverture, and he is attainted of Felony, and dieth; his wife ſhall have all the Land. But if the purchace were before the marriage, then a moiety is gone. *Calthrop, f.* 92, 97. So where the eſtate is made to three ſucceſſively, and one of them doth commit a forfeiture;

ture; this cannot hurt the eſtate of the other two. So where a Copyholder in Fee by Licence doth make a Leaſe for years by Deed, or without licence by Copy and either of theſe Leſſees commit waſte; by this the Reverſion is not forfeit. *Co. of Copyhold*, 172.

8. If a Copyhold be ſurrendred to the uſe of *I. S.* he cannot forfeit this before admittance.

9. If one have ſeveral Copies, the forfeiture of one of them is not the forfeit of the other. *Co. of Copyhold*, 174.

CHAP. XXIII.

Who ſhall take advantage of a forfeiture.

REgularly none may take advantage of a forfeiture, but he that is Lord of the Manor at the time of the forfeiture. And therefore if the Copyholder make a Feoffment, and then the Lord doth alien the Manor; in this caſe neither the grantor nor the grantee can take advantage of the forfeiture. And yet if there be Tenant for life of the manor, the remainder in fee, and a Copyholder commit

commit a forfeiture, and the Tenant for life of the Manor die before his entry; in this case he in remainder may enter. And he that was never Lord of the Manor, shall take advantage of the forfeiture. As where the Lord makes a feoffment of a Copyhold in fee; in this case the Feoffee shall enter for the forfeiture, *Co.* 4. 24. *of Copyhold*, 176.

CHAP. XXIV.

What Act will be a confirmation of an Estate forfeit.

IN case where a Copyhold is forfeit, and the Lord have notice of it, if he shall doe any thing afterward whereby he shall acknowledge the Copyholder to be his Tenant, as distrain upon the Land for rent, admit him to be Tenant, or the like; by this the Lord is concluded to take advantage of the forfeiture. And yet if the Act done by the Copyholder be such an Act as doth destroy the Copyhold, as if he makes a Feoffment of the Copyhold, or the like; in this case, no subsequent Act of the Lord will help. *Co. of Copyhold*, 176.

CHAP.

CHAP. XXV.

In what Statutes Copyholds and Copyholders are included.

THEY are expreſſed in theſe following Statutes. *R.* 3.4. A Copyholder that hath 26*s.* 6*d.* the year, may be a Juror, as well as he that hath 20*s.* the year of the freehold Land. 1 *Ed.* 6. 14. about Abby Land. 2 *Ed.* 6. 8. about Offices found. 1 *M.* 12. now exſpired, touching the aſſiſtence of Juſtices of Peace to ſuppreſs a Riot. 5 *Eliz.* 14. about Forgery to defraud a Copyholder. 13 *Eliz.* 7. about the Copyhold of a Bankrupt. 14 *Eliz.* 6. about his Copyhold that doth depart the Kingdom without leave. 35 *Eliz.* 2. about a Recuſant. When a Statute doth alter the Service, Tenure, Intereſt of the Land, or other thing in prejudice of the Lord, Cuſtome or Manor, or of the Tenant, there, the general words of Tenant, or the like, extend not to Copyholders: But when the Act is for the good of the Common-wealth, and no prejudice may accrue by reaſon of any alteration of the

the intereſt, ſervice or cuſtome of the Manor, there uſually Copyholders and Copyholds are included. *Co.* 3. 8. For this cauſe it is judged that they are not intended in theſe following Statutes. (*viz.*) *Weſtm.*2.1. Of entails. And yet by coſtome ſuch Lands may be entailed. Cuſtome. *Weſtm.* 2. 26. Of an *Elegit.* 16 *R.*2.5. Of forfeiture of Lands by receiving Bulls, *&c.* 2 *H.* 5.7. Of the forfeiture of Hereticks. 27 *H.*8.10. Of Uſes. 31 *H.*8. 1. 32 *H.*8. 32. About Partition. 32 *H.* 8. 28. Of Leaſes made by Tenant in tail, or husband and wife. 17 *Ed.* 2. 18. Of Idiots Lands. *Merton* 1. Of Damages. *Co.* 4. 30. *Weſtm.* 2. 3. 31 *H.* 8. 13. And that of 32 *H.* 8. 9. Of Champerty. *Co.*4. 26. 4 *H.* 7. 24. Of Fines. *Co.* 9. 105.

CHAP. XXVI.

How a Copyholder may ſue and be ſued.

FOR the better underſtanding hereof, theſe things are to be known. 1. For any thing which doth concern his Copyhold, he cannot ſue or be ſued in any real Action, or Action ſavouring of the

reality elſewhere, but in the Lord's Court: So that if a ſtranger out him, he muſt ſue by plaint in the Lord's Court as his caſe is. And there the entries are thus, *A.* of B. plaineth againſt *C.* of *D.* of a plea of Land. *viz.* of one meſſuage, 40 acres of Land, 4 acres of Meadow, *&c.* with the appurtenances. And maketh proteſtation in nature of the writ of our Lord the King of Aſſiſe of Mortdanceſtor at the Common-law, or of the writ of our Lord the King of Aſſiſe of novel diſſeiſin at the Common-law, *&c.*

Pledges of proſecuting, &c.
Littlet. Sect. 76.

But he may bring an Action perſonal in any other Court. And the Leſſee of a Copyholder may bring an *Ejectione firmæ* in any other Court. *Co. of Copyhold*, 147.

Ejectione firmæ. 2. If the Lord out him he may have an *Ejectione firmæ*, or Treſpaſs againſt the Lord in any C: but he cannot have an Aſſiſe againſt the Lord. *Co. of Copyhold*, 146.

3. A Copyholder of baſe Tenure in ancient Demeſne cannot have a Writ of *Droit cloſe* or *Monſtraverunt*; but Tenants

nants of Franktenure in ancient Demeſne may. *Co. of Copyhold*, 146.

4. If the Copyholder by licence of the Lord make a Leaſe of the Land, and the Leſſee cut down timber, there being a cuſtome that the Copyholder may cut down timber: the Copyholder in this caſe muſt puniſh this in the Lord's Court.

5. If a wife dowable by cuſtome recover her dower by plaint in the Lord's Court, and in the Action ſhe recover damages alſo; ſhe may not ſue for theſe damages at Common-law. *Co. of Copyhold*, 146.

6. If a Copyholder make a Leaſe by Copy for years, or by Deed with Licence rendring Rent, an Action of dept for this Rent may be brought in any o-Court. *Co. of Copyhold*, 146.

7. If a Stranger cut down the Trees growing on the Copyhold, an action of Treſpaſs lieth againſt him for this at Common-law. So if the Trees by cuſtome do belong to the Tenant, and the Lord doth cut them down, *Co. of Copyhold*, 147.

8. If the Copyholder ſurrender to the uſe of the Creditor in truſt to pay his

debts, and then to have the Land again, and he keep it; in this case this being proved by examination of witnesses upon an English Bill, the Lord may reseise and restore the Land. *Calthrop, f.74.*

9. If the Lord have a great waste, and he grant a Rent out of it; the Grantee may distrain the Tenant, unless they can prescribe to have Common there. *Calth. f.97.*

10. If the Steward, Bailiff, or Tenants, into whose hands the surrender is made, refuse to present or admit the Tenant; in this case he is to sue by Bill or Petition to the Lord in his Court. And if the Lord will not there doe him right, the Tenant may sue him and them in Chancery, and there he shall have relief. *Co. of Copyhold*, 180.

11. For the order of Process in Suits in the Lord's Court, enquire the custome of the place, and see *Calthrop, fol. 75.98.*

CHAP.

CHAP. XXVII.

Of a Licence to Alien.

FOR this, theſe things are to be known.

1. That the Lord may licenſe his Tenant to let by Deed for years, if there be a cuſtome for it. And the entry of this in the Court Rolls is thus. At this Court *I. S.* prayeth Licence of the Lord to demiſe, *&c.* To whom the Lord gives licence, *&c.* And if it be by the Steward, Whom the Lord by the Steward hath licenſed. *Co. of Copyhold, f.*123,125.

2. This Licence (it ſeemeth) is not grantable by the Steward without a ſpecial cuſtome to enable him to doe it, or a ſpecial warrant from the Lord to give him power ſo to doe. *Co. of Copyhold. f.* 124. Cuſtome.

3. If a Tenant for life of a Manor grant a Licence to a Copyholder to alien, and the Lord die; in this caſe the licence is good. *Co. of Copyhold*, 85.

CHAP. XXVIII.

Of a Tenure.

A Tenure is the manner whereby Lands are holden of their Lords. This ſeemeth to differ little from Service, for there can be no Tenure without ſome ſervice; but that Services ſeem to be the effect of a Tenure. Touching ſo much of which as ſhall ſerve to our purpoſe theſe things are to be known.

1. A Tenure is ſaid to be either perfect, which is between the very Lord and very Tenant; or imperfect, which is between the Donor and Donee, or Leſſor and Leſſee. A Tenure alſo is ſaid to be Spiritual: and ſo it is either incertain as Frankalmoigne; or certain, as divine Service. Or it is temporal. And ſo it is more honourable, or for a time of war; ſuch is all kind of Service in Chivalry, as Eſcuage, Cornage, Grand-ſerjeanty, Knights Service in Capite, Knights Service or Chivalry, and Caſtle-gard; or more baſe, and for a time of Peace; ſuch is all Socage Tenure, as Petit Serjeanty, Burgage and Socage in Capite.

But

But to hold in Fee farm is no Tenure at all. *Littleton's Tenures throughout.*

2. Lands and Tenements do lie in Tenure, and so (it seems) doth an advowson in gross, and of these a Tenure may be said to be; but not of a Rent, Seigniory, Common, or the like, except it be in case of the King. *Broo. Tenure.*

3. Any man may extinct a Tenure, but no man but the King can create a perfect Tenure, or alter a Tenure to bring it to another, but in some special cases, *Co. of Copyhold, f.* 55. *Dyer* 84. And therefore if a Tenant in Fee-simple enfeoff another in fee, neither by the express reservation of the Feoffor, nor implied reservation of the Law, can a Perfect Tenure be made; the Feoffee shall hold not of the Feoffor, but of the Lord paramount.

We shall speak but of two kinds of Tenures, Knights Service or Chivalry, and Socage. And the first of Knights Service.

CHAP: XXIX.

Of Knights Service.

THis is ſuch a Tenure, as whereby the Tenant is bound to go with his Lord in the Wars, or keep a Caſtle, or the like. Touching which this onely for our purpoſe is to be known.

1. This may be of the King; as when one doth hold of him as of his Manor *Dale*, or the like.

2. To this doth belong Aid, Homage, Fealty, Ward, Marriage, and Relief; but it doth not draw any other Land with it, neither need the Tenant to ſue Livery for this Land. *Co.* 1.*part*, *f.*75.56.

CHAP. XXX.

Of Socage.

IT is a Tenure whereby the Tenant doth hold of his Lord to pay him ſome Rent, or to doe him ſome Huſbandry buſineſs for all manner of Services. Touching ſo much whereof as is needfull in this place, know this.

1. That

1. That it is either free, *i. e.* to pay a certain ſum of money in lieu of all Services; or it is villein, *i. e.* to plow the Lord's ground, carry his dung, or the like.

2. To this doth belong Aid and Relief, but not Wardſhip, Homage, or Marriage. *Co. 9. 130. Littl. Cap. Socage.*

CHAP. XXXI.

Of Services.

SErvice is that duty which the Tenant by reaſon of his Fee oweth to his Lord. Touching ſo much whereof as we ſhall uſe here, know theſe things. Services as Tenures do admit of many diviſions. Some of them are either more noble, as Knights Service, and the like; or more baſe and clowniſh, as Socage, and the like. Some of them were bound, and ſome free: ſome of them were Real, as Wardſhips, Marriages, or the like; and ſome of them are Perſonal or Corporal, (*i. e.*) to be done by mens perſons or bodies: and theſe again are either of Submiſſion, or of profit. Of Submiſſion, as Homage and fealty. Of profit and this either

either to the publick profit of the Kingdom, or private profit of the Lord. To the publick, either for defence of the Realm; as firſt, all kind of Knights Service. Secondly, to repair ways and bridges. Thirdly, for works of piety, to maintain a Preacher, repair Churches, or the like. Fourthly for works of Charity, as to marry poor women or the like. Fifthly, for works of Juſtice, as to aid the Sheriff, or the like.

To the private profit of the Lord, as Rent, ſuit of Court, to the Butler, Baker, or Carver to the Lord.

Some ſervices are annual, to be paid or performed every year, as Rent, ſuit of Court, and the like.

And ſome are accidental, to be paid or done now and then, or at one time, as it falls out, as Heriot, Fealty, and Homage.

Theſe, ſome of them lie in Render, as to pay Rent: ſome lie in Prender, as that the Lord ſhall take four load of wood out of his Tenant's grounds: and ſome of them again lie in Uſer, as that the Lord ſhall have common for his Cattel in the Tenant's grounds.

Theſe are alſo divided again into intire

tire Services, as a horſe a ſpur, or the like; and into dividable Services, as money and the like: and into certain, and incertain: and into ſervices of fidelity, and no profit; or profit, and no fidelity. *Co. 6.* 10. 108. *Litt.* 122.

If the Tenant or Freeholder refuſe to doe Corporal ſervices, as Homage, Fealty, amend high-ways, bridges, or the like, do the office of a Butler, Carver, Baker, or the like, pale the Lord's park, tile his Houſes, thatch his Barn, or the like, being bound by this Tenure: the Lord may diſtrain the Goods or Cattel of his Tenant, and keep them till ſatisfaction. *Co. of Copyholds, f.* 49.

So if a Freeholder refuſe to pay his annual Rent or Service according to his Tenure, the Lord may diſtrain and avow the taking up of a Replevin. But ſo long as the Rent doth continue of any eſtate of Franktenant, no Action of debt lieth for the arrearages, no more than for a corporal Service. But after ſeiſin he may have an aſſiſe for the rent. But after the eſtate is determined, an Action of debt will lie for the arrears of the rent, *Co. of Copyhold, f.* 50. But of this ſee more at large, *Chap.* 42.

But

But accidental Services are gotten either by ſeiſure, as a Wardſhip of the heir's body, waiſs, eſtrays, wrecks, deodands, and ſuch like forfeitures; or by entry, as the Wardſhip of the heir's Land, ſo upon Land forfeit to the Lord upon the breach of ſome condition, or upon an Alienation in Mortmain; or by ſeiſure or diſtreſs, as Heriots, Service or Cuſtome; or by Entry, or Action, as Lands forfeit to the Lord by the ceſſor of the Tenant, or eſcheat upon the Attainder of the Tenant, or his death without heir: in the one caſe he hath a writ *Ceſſavit*, in the other a writ of Eſcheat: or by diſtreſs or Action, as reliefs and amercements. For relief, which is no ſervice, but the fruit or impriſonment of a Service, the Lord may bring an Action of debt or diſtrain: and for amercements, the Lord may either diſtrain, or bring an Action of debt. Other remedies there are againſt ſtrangers that detain theſe Services from the Lord. *Co. of Copyhold, f.* 50, 51, 52.

CHAP.

CHAP. XXXII.

Of Homage and Fealty.

SErvices of Submiſſion are Homage, and Fealty, which are certain Ceremonies uſed amongſt Tenants, whereby they ſubmit themſelves to their Lords, or bind themſelvs by ſolemn Oath or faithfull promiſe, from that day forward to become the Lord's men for life, member, terrene honour, or at leaſt to owe him faith for the Lands they hold of him. Touching which theſe things are to be known.

1. Thus far theſe agree, that they are both taken when the Tenant firſt entereth into his Land.

2. They tend to one end, to enforce the Tenant to ſubmit to the Lord. But they differ in many things. Firſt, in doing Fealty, the Tenant taketh a ſolemn oath; in doing Homage, he onely giveth a faithfull promiſe. Fealty therefore is more ſacred; Homage more humble. For in doing Homage, the Tenant kneeleth; in doing Fealty, he ſtandeth: in doing Homage, he is uncovered; in doing Fealty,

ty, he may be covered: in doing homage the Lord kiſſeth his Tenant; in doing Fealty, not: and in doing Homage, he promiſeth to become the Lord's man for life, member, and terrene honour; but in doing Fealty, he ſweareth onely to become the Lord's faithfull Tenant: for Homage concerneth war, and doth properly appertain to Knights ſervice; but Fealty chiefly concerneth Service at home, and properly appertaineth to Socage Tenure. Albeit Homage may be done by Socage Tenant, and that Homage *ex ſe* maketh Socage Tenure, and not Knights ſervice: yet it was not ſo from the beginning. Secondly, none but the Lord in perſon can receive Homage, but the Lord's Steward or Bailiff may receive Fealty. And the Lord who hath but an eſtate for life in his Seigniory, cannot receive Homage, but he may receive Fealty. Thirdly, no Copyholder may do Homage, but he may do Fealty: no Tenant for life or years, but in Fee-ſimple or tail, can do homage; but ſuch a Tenant may do fealty. Fourthly, homage can be but once done to the Lord by the ſame Tenant; but fealty may be often. And therefore if lands deſcend to me from

from one, and I doe Homage, and after other lands deſcend from another, I ſhall not doe Homage again, but I ſhall doe Fealty. So if a Copyholder ſurrender to the uſe of *I. S. White Acre*, for this he ſhall do Fealty: if he ſurrender *Black Acre* to his uſe, he ſhall doe Fealty for this alſo. *Co. of Copyhold, Sect. 19, 20, 21.*

CHAP. XXXIII.

Of Suit of Court.

Suit of Court is the attendance which a Tenant doth owe to a Court: for which theſe things muſt be known.

1. That this is either real or royal, which is the ſervice that men owe to the Sheriff's turn, and Law-days, which men are bound to by their Oath of Allegeance there taken, and by their reſidence and abode within the compaſs of the Leet, and not in reſpect of the Tenure of their Land. And therefore if one have Land in divers Hundreds, and he be diſtrained where he doth not dwell, he ſhall be diſcharged by a writ. And for default of this ſervice, he may be amerced, and not diſtrained. Or it is Cove-

Covenant Suit, which is where one hath bound himſelf by Covenant to doe Suit to another's Court, for remedy whereof he muſt ſue the Covenant. Or it is Suit cuſtome, where, by the cuſtome of the place, one is bound to doe ſuit of Court to this or that Court; ſo are ſome in the Leet Courts, Barons and Hundred Courts. And this is not to be done in reſpect of man's reſiancy or abode, but in reſpect of his Tenure, of that Land within the Manor, Hundred or County where the County is. And for this a man muſt be diſtrained, and not amerced; or he may be forced by a ſpecial writ.

2. If the Land to which the Service doth belong doth come into the hands of divers Parceners, the eldeſt muſt doe it, and the reſt ſhall be contributory, and they may be compelled thereto by a ſpecial writ for that purpoſe. So where there be many Feoffees or Joyntenants, one ſhall doe the Suit, and the reſt ſhall be forced to contribute. *Br. Suit* 17. *F. N. B.* 58.

CHAP.

CHAP. XXXIV.

Of a Gardian, Gard, and Wardſhip.

A Gardian is one that hath the cuſtody of an Infant being under age, or of that which is his, or of both. The ward is the Infant. The cuſtody of an heir is called the Wardſhip. And a Gardian is either by Common-law, or by cuſtome. By Common-law, as a Gardian in Chivalry, Gardian in nature, in Socage, or becauſe of nurture. The Gardian and Wardſhip in Chivalry is the Wardſhip of ſuch an Infant, whoſe anceſtor held his land by Tenure in Capite, or Knights ſervice: And by reaſon thereof, his Heir, be it male or female; and the land, muſt be in the cuſtody and under the protection of the Lord during the Minority. And touching this, theſe things are to be known.

1. The Lord of whom the Land is held by the Tenure ſhall have this Wardſhip as a chattel to his own uſe, to be ſold or diſpoſed, and to go to his Executors as other chattels.

2. He ſhall have the Wardſhip of the

heir male till one and twenty years old, of the female till sixteen, if she be unmarried at her Ancestor's death; but if she be married, or above 14 at her Ancestor's death, she is not to be in ward.

3. This Tenure draweth to it with the land the profit of the heir's marriage, which the Lord will have. *Co. 2. part Inst.* 75. 88. This Gardian is to take all the profit of the land without waste making, and to keep his goods and chattels safe to the heir's use: he is to give him fit education, and to protect him from hurt, marry him without disparagement, and when he is of age, let him have his land again. Unless it be where the heir marry himself, or will not be married by his Lord; in which case he may keep the land till he be satisfied for the value or forfeiture of his marriage. *Litt. in toto.*

4. If a child, living his father or mother, happen to be in such a case, his father or mother, and no other, shall have the wardship of his body: and then he is called a Gardian in Nature. *Bro. Gardian* 110. *Plow.* 304. *F. N. B.* fol. 90. 143. *Co. of Copyhold*, 4. 26, 27.

The gardian and wardship in socage

is

is the wardſhip of ſuch an Infant whoſe Anceſtor died ſeiſed of land held by Socage Tenure, or in the nature of Socage Tenure as Petit Serjeanty, Copy of Court Roll, or the like. And touching this, theſe things are to be known.

1. The next of kin to whom the heritage by the heir's death will not deſcend, and that will not have benefit by his death, ſhall have this Wardſhip.

2. He ſhall hold the Land, and take the profits to the uſe of the heir onely, and not to his own uſe; onely he ſhall have reaſonable allowance for education and expences.

3. This Wardſhip ſhall continue no longer, but till the heir be fourteen years of age, and then the heir may call the Gardian to account for the profits of the Land. And if the Gardian marry his heir before he be fourteen years old, he muſt account to him not onely for the profits of the Land, but alſo for the marriage, and ſhall pay to the heir ſo much money as was offered him, or he might have had in marriage.

4. This wardſhip is annexed to the perſon of the Gardian, therefore he

cannot grant to another; and if he die before the heir be fourteen years old, the Executor or Administrator shall not have it, but it must go to the next of kin: and if a wife have it, it will not be the husband's by marriage as a chattel will be. And therefore in all these respects it doth differ from the Wardship in Knights service.

5. The Gardians duty is not to doe waste, but to preserve the Inheritance and the writings, and to give the heir fitting education, and at last to marry him with care, and to the heir's advantage, and not to give or sell the marriage. *Litt. chap. 4. in toto*, and *Co. upon it*, *Co. of Copyhold. f. 26, 27.*

If a man die seised of a rent Charge, Common, or the like, and his heir is within age of fourteen years, here he may chuse his Gardian: and if he be so tender as he cannot, and the father have made no disposition by his will, it is fit for the next of kin, or Gardian in Socage, if any be. However, whosoever doth receive the profits thereof shall be chargeable to the Infant in account. *Co. super Litt. f. 87.*

The Gardian because of Nature, who

who also is called a Tutor, is either Testamentary, (*i.e.*) such a one as is made so by will; as when a man dieth with goods or chattels, or Lands not held in Knights Service or Socage: or appointed by the Prætor, made by the Ordinary. Touching the first, these things are to be known.

1. He may give his goods and chattels to the Child, and by his Will farther appoint some friend to have the government of his child, person and estate, untill he come to fourteen years old: for then he shall be out of ward for his body, but his goods may be kept longer from him if his father's Will be so. *Co. of Copyhold, f.* 23, 24.

2. He may by his will commit his Socage Land to what friend he please, and for what time he please: but so he cannot doe of Knights Service Land.

3. If a Copyholder die, his heir under fourteen years old, the Lord must appoint his Gardian till he be fourteen years old, and the father cannot by his Will prevent it.

The Tutor or Gardian appointed by the Prætor, is made by the Ordinary; which is where the father in the case be-

fore doth give the eſtate to the Child, and appoint no Gardian. Touching which theſe things are to be known.

1. In this caſe the Ordinary may appoint one to be Gardian, till the Infant be fourteen years old.

Invito curatur non datur.

2. After fourteen he is not to have any aſſigned, for then the Rule is, A Gardian ſhall not be forced upon a man. *Co. of Copyhold, fol.* 26. 27.

The Gardian by Cuſtome is Orphans in the City of *London*, and other Cities. Some make a third ſort, or Gardian by Statute-law, as *Coke upon Litt. fol.* 38. 6.

For the getting of a Wardſhip of the body, it muſt be by ſeiſure of the Lands, by Entry. *Coke of Copyhold, fol.* 51.

If a ſtranger detain the ward's body or Land from the right Lord, he may have a ſpecial Writ to relieve himſelf againſt him in this Caſe. *Coke of Copyhold, fol.* 52.

CHAP.

CHAP. XXXV.

Of Aid.

AID is a yielding of help by one to another to whom he oweth it, and whose case calleth for it; and it is from a superiour to an inferiour; as when a particular Tenant is sued, and he in reversion helpeth to defend the suit: or from one equal to another; as when a Parcener is sued for and loseth part of the Land, she shall have aid of her fellow. Or it is from an Inferiour to a Superiour; so the Subject must help the King by Subsidy; so the Tenant is to aid the Lord, touching which these things must be known.

1. The Tenant by Knights Service, and Tenant by Socage, both are to yield it.

2. Reasonable aid shall be twenty shillings for a whole Knights Fee, of him that holdeth by a Knights Fee in Chivalry, and as much for twenty pound Land held in Socage: and so for the rate.

3. It is for two ends: To make the

Lord's ſon Knight, and to marry his eldeſt daughter.

4. That to make the ſon Knight, he may have it at his age of fifteen years; that to marry his daughter, at her age of ſeven years.

5. If he will not pay it, the Lord may diſtrain for it, or recover it by a ſpecial Writ for that purpoſe.

If the father levy it of his Tenant, and die before his daughter be married, his Executor, if he have Aſſets, otherwiſe his heir, ſhall anſwer what he received. *Weſtmin.* 1. 35. *Coke of Copyhold, fol.* 91. 162. *F. N. B.* 82. *Coke* 11. 44.

CHAP. XXXVI.

Of Herriots or Harriots.

THIS is the beſt chattel which the Tenant hath at the time of his death or alienation, which he is to render to his Lord. This in ſome places is his beſt live beaſt, in ſome places his beſt goods, in ſome places the beſt upon the Land, in ſome places his beſt goods where ever it be. *Coke of Copyhold, fol.* 28.

For

For the opening of this farther, know these things.

1. This is either by cuſtome, as amongſt Copyholders, when it is due and hath been paid time out of mind, according to the cuſtome of the place, after the death or alienation of the Tenant: or by Service, when there is no ſuch cuſtome in the place, but it is by ſpecial reſervation and agreement, that the Tenant ſhall hold his Land to pay a herriot at the time of death or alienation.

2. Herriot Service is ſeldom received on any leſs eſtate than inheritance, but may be reſerved on a leſſer eſtate: but Herriot cuſtome is uſually paid on an eſtate for life or years.

3. For Herriot cuſtome, albeit the Lord cannot ſhew the original of it, yet if he can ſhew how it hath been paid from time to time upon the death and alienation of the Tenants, it is good.

4. The Lord hath a property in this, and therefore as ſoon as it happens, the Lord may ſeiſe it whereever he finds it; and if it be detained, he may have a Detinue for it; if eloyned, an Action of the Caſe; or he may diſtrain for it, if he will.

5. If a woman be to pay a Herriot by cuſtome,

cuſtome, her husband's goods ſhall not be taken without ſpecial cuſtome. *M. 8. Jac. B. R.*

6. One cannot by deviſe prevent the Lord of this duty.

7. If the cuſtome be that if he die ſeiſed he ſhall pay it, and he is ouſted and dieth before entry, yet he muſt pay it.

8. For Herriot Service, if it be certain, as a beaſt, *&c.* the Lord may either ſeiſe or diſtrain: but if it be incertain, the Lord cannot ſeiſe it, but he muſt diſtrain for it.

9. If the Lord chuſe the worſt, he cannot after help it, but is concluded. 28. *Henr.* 7. 13. *Plow.* 96. *Kelw.* 184. 8 *Hen.* 7. 10. *Doct. & St. f.* 76. *March Rep.* 23. *Broo. Herriots in tota Co. upon Litt. fol.* 185. 16 *Hen.* 7. 5.

CHAP. XXXVII.

Of a Relief.

A Relief is a certain ſum of money or other thing which the Heir of a Freeholder being of full age at the time of his Anceſtor's death is then to pay

pay the Lord at the entrance of the heir into his Land. And this is all the Lord is to have of his Tenant when he is of full age. *Terms of the Law.* And it may be divided into Relief Cuſtome, and Relief Service. Touching which theſe things are to be known.

1. This and Herriot agree in ſome things, but in this differ. Firſt a Herriot lieth in taking, and Relief in giving. Secondly, a Herriot is paid for a Tenant deceaſed, a Relief for an heir come to the Land. Thirdly, Herriots are paid by Copyholders, Reliefs by Freeholders onely. Fourthly, Herriots are ever upon ſome Cuſtome or ſpecial Reſervation, but Reliefs are incident to the Fee, and due without Cuſtome or Reſervation. *Co. of Copyhold, f.* 38.

2. There is a kind of payment like to this by ſpecial Cuſtome in ſome places alſo upon the Alienation of the Tenant, *Co. of Copyhold, f.* 32. This is paid for Land held in ſocage, and for Land held by Knights Service. If the King or other Lord have the wardſhip of an heir within age at the death of his Anceſtor, he ſhall have no Relief at his full age. *Magna Charta, Cap.* 3. And yet if the King

King have the wardſhip of other Lands by his Tenure by the nonage of the heir, the heir when he comes to age muſt pay a Relief to other Lords, and ſo to the King alſo, if he be to ſue out no Livery. *Co. upon Litt. f.* 71. *Magna Ch.* 13. *Bro. Relief.* 13. And generally where one ſhall be in ward if he be within age, he ſhall pay a Relief if he be of full age. *Br. Relief.* 12.

3. This is not alike for all Tenures, or in all places, and therefore incertain: in ſome places it is by cuſtome a year's, in ſome places half a year's profit, and there the cuſtome is to be obſerved. By Tenure it is more or leſs, and in ſome caſes to be paid at one time, and in ſome caſes at another time. Regularly in caſe of Knights Service, if his heir be full twenty one years old at the death of the Anceſtor. The Relief for a Dukedom two hundred pound, for a Marqueſs two hundred marks, for an Earldom an hundred pound, for a Barony an hundred marks, for a whole Knights Fee, which anciently was ſo much as was thought ſufficient for a Knights living, a hundred ſhillings. And ſo for the rate. If the Tenure be by grant Ser-

Serjeanty, the Relief is the value of the Land for one year. If the Tenure be Socage Tenure, or in the nature of Socage Tenure, and the heir about fourteen years old at the death of the Anceſtor, the Relief is double the Rent; (*i. e.*) if the Rent be ten ſhillings, the Relief is ten ſhillings more, which the Tenant muſt pay preſently: And if he be to pay five ſhillings at *Eaſter*, or a pair of Spurs, the Tenant may double which he will; but if he paſs the day, the Lord may have which he will. But for Corporal Services, as days work at harveſt, or the like, more Relief is to be paid. *Co. upon Litt. fol.* 69, 83, 84, 91, 162. *Coke.* 7. 33. *Kelw.* 136.

4. For this Service the Lord may diſtrain, and cannot have an Action of debt as ſome ſay: And his Executors may bring an Action of debt, but cannot diſtrain. Others, that the Lord may diſtrain or bring Action of debt. *Co. of Copyhold, fol.*51. Where it is by Cuſtome, the Lord ſhall have the remedy accuſtomed.

CHAP.

CHAP. XXXVIII.

Of a Fine and Amercement.

THIS word Fine is taken in divers ſenſes; but to our purpoſe here, It is a ſum of money impoſed upon a perſon by the Steward in a Leet, for ſome offence or miſdemeanour committed in his preſence: and an Amercement is alſo a penalty aſſeſſed or pecuniary puniſhment for ſome offence done by way of Omiſſion or Commiſſion. As touching which theſe things are to be known.

Theſe agree in ſome things, for they are penalties impoſed for offences: but they differ in theſe things. Firſt, a Fine is commonly for ſome great offence, and is a greater ſum; and Amercement for a leſs offence, and a leſſer ſum. Secondly a Fine is in a Court of Record onely, and therefore a Court Baron, which is no Court of Record, cannot fine; and therefore this Court can amerce onely: But a Leet may amerce as well as fine. Thirdly a fine need not be aſſered, but an amerce-

ment

ment commonly ſo may be, and muſt be. *Co.* 8. 61. *of Copyhold*, *f.* 40.

And for ſo much of this as doth concern our preſent purpoſe, theſe things are to be known.

1. For any miſdemeanour in the face of a Court; as if any one uſe contemptible words to the Steward or Jury, a Juror refuſe to be ſworn, or an Officer of the Court neglect his duty or be corrupt, if it be in a Leet, the Judge may fine the offender, but if it be in a Court Baron, he can onely amerce him: And if the offence be out of Court, the Jury muſt preſent it, and then the Offender muſt be amerced by the Jury; except it be by Officers of the Court, for then it may be done by the Steward, and needs not to be aſſered. Likewiſe if it be a Townſhip or Village that doth offend, the amercement muſt be put upon the whole.

2. The amercement muſt be reaſonable, otherwiſe the party grieved may relieve himſelf by a *Moderata Miſericordia*. *F. N. B.* 75. *Co.* 11. 43. *Co.* 8. 61. 59. *Co. of Copyhold*, 40, 41, *&c.*

CHAP.

CHAP. XXXIX.

Of a By-law.

BY-laws are Orders made in a Court Leet, Court Baron, or elſewhere, by common conſent and agreement, for the good of thoſe that make them, to bind them farther than the publick Law doth bind. Touching which theſe things as material in this place are to be known.

1. That the Inhabitants of a Village, or other ſuch peculiar Society, or the major part of them together in their Court Leet, Court Baron, or otherwiſe, by a mutual conſent and agreement of ſuch major part, may make any Ordinances and orders for the better government of the place: as for repairing Churches, Bridges, High-ways, or otherwiſe for the publick good. And for ſuch like things as theſe by the very Common-law, without any ſpecial cuſtome, this being made by the major part, will not onely bind them who did agree to it but all others of that ſociety, or within the Leet, if it be made there. And they may hereby

hereby make taxes upon all the Inhabitants, appoint publick Officers to levy them, and penalties, as by another Law. But for ſuch things as concern the private, well and better government of the place onely; without a ſpecial cuſtome to warrant it, they cannot make ſuch By-Laws: Neither will in this caſe the greater part bind the reſt, without a ſpecial cuſtome to warrant it. *Co.* 6. 63. 5. 63. 11. *H.* 7. 14. 21. 21 *H.* 7. 20. 40. 44 *Ed.* 3. 19. *Bro. Leet* 34. *Preſcription* 40.

2. If a Tax or Amercement be put upon a Village, and the major part agree what every man ſhall pay, and they refuſe; it ſeems they may appoint one to levy it, and he may diſtrain for it, and juſtifie the diſtreſs. *D. & St. f.* 74. Diſtreſs.

3. No By-Law in this caſe can be made to impriſon the Refuſers, but diſtreſs and action of debt in this caſe is the proper remedy for a penalty impoſed, or breach of a By-Law. *Co.* 5. 64. Impriſonment.

4. Such By-Laws as are againſt Law and Reaſon are void.

5. The Lord may by Preſcription diſtrain for the Amercements upon them, and ſell the diſtreſs. *Bro. Leet* 34. *Preſcription* 34.

CHAP. XL.

Of a Forfiture.

A Forfeiture is the effect of transgreſſion of ſome Law, or of the committing of ſome offence; by the doing whereof, ſome real or perſonal thing is forfeit. And this may be of Land, or of goods or chattels. And of Lands, it may be either of Copyhold Land, or of Freehold Land. Of Copyhold Land we have ſpoken before in *Chap.* 21, 22, 23. Touching forfeiture of Freehold Lands theſe things are to be known.

Mortmain. 1. If any Freeholder doth alien his Land in Mortmain, he forfeiteth his Freehold.

Ceſſavit. 2. If a Freeholder do ceaſe for the ſpace of two years to perform his Services, or pay his rent he is bound to by his Tenure, and hath not ſufficient Goods and Chattels upon his Land, whereby to be diſtrained, he forfeiteth it.

3. If the Freeholder breaketh any condition whereto he is tied, he forfeits his

his Freehold. *Co. of Copyhold, f.* 44. Many other ways may an eſtate of Freehold be forfeit, of which we ſhall not make mention here. And touching the forfeiture of goods, theſe things are to be known for this purpoſe.

1. If a Felon ſtealeth goods, and upon purſuit made waiveth them, and leaveth them in any part of the Manor, and be not attached upon the freſh ſuit of the owner, theſe goods are a waif, and forfeit to the Lord, who may ſeiſe them. Waif.

2. If any beaſt be found wandring in any place, and taken up, and proclaimed in three Market-Towns adjoyning, and not claimed by the owner within a year and a day, this is an eſtray, and forfeit to the Lord. Eſtray.

3. If any ſuffer ſhipwreck on the Seas, and by the violence of the waves the goods are caſt upon the ſhore, and being ſeiſed by the Bailiff, are not claimed within a year and a day, this is wreck, and forfeit to the Lord, who may ſeiſe upon it. Wreck.

4. If any come to an untimely death without the fault of any reaſonable Creature, the cauſe of this death, as a Deodand, is forfeit to the Lord; as a Deodand.

tree, or cart with horſes falling, or horſe ſtriking, theſe are all of them Deodands. And many other ways may goods and chattels be forfeit, whereof we cannot ſpeak here. And theſe albeit they be not incident to Manors, yet muſt Lords of Manors claim, and may have them by Preſcription or Patent from the King. *Co. of Copyhold, f.* 44, 45.

CHAP. XLI.

Of Eſcheat.

ESCheat is where a Tenant in Feo-ſimple land dieth, not having heir general or ſpecial to be capable of the Inheritance, in this caſe the Lord ſhall have it. Touching which, theſe things are to be known.

1. There are two cauſes of this Eſcheat. Firſt, attainder of the bloud by doing of Treaſon or Felony. Secondly, failer of the bloud by extinguiſhment or Baſtardy.

2. There can be no Eſcheat of intailed land, but of Fee-ſimple land onely.

3. There ſhall be no Eſcheat of things in Action, Uſes, Condition, Rights of Entry

Entry and Action, but of Land onely.

4. If all the heirs de dead, and there is no heir to be found of the Land; or the Anceſtor's bloud is corrupt by Treaſon or Felony done by him; or the Anceſtor be a Baſtard, and die without iſſue of his own body, for no other body can be heir to him, nor can he be heir to any other; in all theſe caſes the Lord ſhall have the Land by eſcheat.

5. If the Baſtard or Tenant be deſſeiſed, and die without heir, yet the Lord may enter: But if the deſſeiſor die, or alien the land to another with good faith before entry, the Lord cannot enter. But in all other caſes the Lord may enter for the Land, or maintain an eſcheat for recovery of the Land. *Co. of Copyhold, f.* 48. *upon Litt.* 268, 312, 314. *Quære.*

6. In caſe of Treaſon the King ſhall have the forfeiture, and in caſe of Felony he ſhall have year, day and waſte: and then the Lord ſhall have it, and till then the Lord is not to have it.

7. But before the Lord in this caſe is to take advantage of it, the Homage where there is a Court ſhall do well to preſent it; and then Proclamation is to be made, that if any ſhall come in and

make a juſt Claim to it he ſhall be received; Which no man doing, the Title is clear in the Lord. *Co. of Copyhold, f.* 84.

Our ſubject matter in hand being about the Profits of a Manor, the Services, Duties and Performances of the Tenants, and the payment of Rent being a ſpecial part thereof, we ſhall add this Title by way of Appendix alone and by it ſelf, and ſo end this Treatiſe.

CHAP. XLII.

Of a Rent.

What it is, and the kinds thereof.

A Rent is a ſum of money or other conſideration iſſuing yearly out of Lands or manual Tenements. *Redditus à redeundo, quia retroit, vel à reddere, i. retro dare.* This differeth eſſentially from an Annuity: For a Rent doth always iſſue out of Lands or Tenements, and the Land alſo is the debtor; otherwiſe it is of an Annuity, which is chargeable upon the perſon of a man onely, and he alone is the debtor for this. *Co. upon Litt.* 141, 142. *Plow.* 132, 138, 139. And of Rents there are ſaid to be three kinds.

1. Rent

1. Rent ſervice, which is, where a man doth hold his Land of his Lord by Fealty and certain rent; or to render and yeild hens, capons, roſes, ſpurs, bows, arrows, horſes, wheat or the like; or to perform any Office, or yield any attendance, or the like. And to this rent diſtreſs is incident of common right. Rent ſervice, what it is. Diſtreſs.

2. Rent charge, which is where an eſtate is made of Lands or Tenements to another in Fee-ſimple, Fee-tail, for life or years, rendring a ſum of money, or other thing, to be paid yearly to him that made it and his heirs: And there is a Clauſe in the Deed, that if the rent be behind it ſhall be lawfull for the Feoffor, Leſſor or Donor to diſtrain for it upon the Land. Or where one doth grant a rent out of his Lands or Tenements to another in Fee for life or years, with ſuch a power to diſtrain for the rent, if it be behind. And to this no diſtreſs is incident of common right, but by the agreement of the parties, the Land is charged with the diſtreſs, and hence it is called a rent charge. Rent charge, what it is.

3. Rent ſeck is, where a rent is reſerved or granted (as in the caſe before) without any Clauſe of diſtreſs, Rent ſeck, what it is.

or power to diſtrain: And this is called *reditus ſiccus*, a dry rent; becauſe he that is to have it, till he hath gotten ſeiſin of it, he hath no remedy to recover it if it be denied to him; and then he hath no other remedy but an Aſſiſe for the recovery of it. *Terms of the Law, Rent; Co. upon Litt.* 142. *Litt. chap.* 12. *Finches ley* 155. *Do. & St. chap.* 30.

And regularly, a man cannot have or challenge or make a Title to any kind of rent, unleſs it be a rent ſervice, or a rent charge in the caſe of Preſcription, or for equality of Partition, unleſs he have a Deed to ſhew for it. *Co.* 6. 63. *Litt.* 40. *Co. upon Litt.* 142. 146.

2. *What kind of Rent it is.*

Rent ſervice.

IF one be ſeiſed of Land in Fee, and make a gift of it in Tail, or make a gift in Tail to one, the remainder in Tail to another, or a Leaſe for life or years, keeping the reverſion in him, without any Clauſe in the Deed inabling him to diſtrain for it; this is a rent ſervice. And if he in reverſion grant away his reverſion to another, and the Tenant attorn; this is a rent ſervice

ſtill

ſtill. But if the reverſion be gone, it doth continue no longer a rent ſervice; for there can be no rent ſervice, but where there is a reverſion. *Litt. Sect.* 214, 215, 228, 229. *Plow.* 132. 142. *Co. upon Litt.* 162.

Rent ſeck.

And therefore if one by Deed indented make a Feoffment in Fee to one, or a gift in Tail, or a Leaſe for Life or years, to one, with the remainder over to another in Fee, and reſerve a rent upon any ſuch eſtate, without any Clauſe of diſtreſs for not payment; this is a rent ſeck, not a rent ſervice. So if one ſeiſed in Fee of Land by Deed, Poll or Indenture, grant a rent iſſuing out of his Land without any Clauſe of diſtreſs for not payment; this is a rent ſeck. *Litt. Sect.* 214, 215, 217. *Co.* 6. 58. *upon Litt.* 150, 151.

If there be Lord and Tenant, and the Lord grant the rent except the Fealty, (which is incident to every rent ſervice) this is a rent ſeck. *Perk. Sect.* 113. So if one hold his Land by Homage, Fealty, and other Services, yielding a rent, and the Lord grant away the rent, reſerving the Services, or grant the Services, ſaving the rent; in theſe caſes the

rent

rent is a rent ſeck. *Litt. Sect.* 226, 227. *Co, upon Litt.* 151.

If one leaſe Land to another for life rendring rent, and after he in reverſion grant away this rent to another; this during the life is a rent ſeck. *Litt. Sect.* 228.

It is ſaid, if a man grant rent out of three Acres, and grant over, that if the rent be behind, that he ſhall diſtrain for the rent in one Acre; this is a rent ſeck in all, and yet he may diſtrain for this in the third Acre. So if a rent be granted to one and his heirs out of an Acre of Land, and that it ſhall be lawfull for him to diſtrain for term of his life; this is a rent charge for his life, but after a rent ſeck. But if it be that he ſhall diſtrain for a certain number of years, this is rent ſeck always. *Co. upon Litt.* 147.

Rent. Charge. If one deviſe a rent by Will in Fee-ſimple, Fee-tail, for life, or for years, without any clauſe of diſtreſs; this is a rent ſeck; But if it be with a clauſe of diſtreſs, it is a rent charge. *Co.* 6. 56. *Dyer* 348.

If one make a Feoffment in Fee, gift in tail, Leaſe for life or years, of Land to one,

one, or a gift in tail, leaſe for life or years, with the remainder over to another in fee, and upon any ſuch eſtate reſerve a rent, and in the Deed there is a power to diſtrain in the Feoffor, Donor or Leſſor, if the rent be behind; this is a rent charge. *Co. upon Litt.* 143 *Plow.* 132. *Lit. Sect.* 217. So if one by Indenture or Deed Poll grant a yearly rent to be iſſuing out of his Lands to another in Fee-ſimple, Fee-tail, for life or years, with ſuch a power in the Deed. 13 *Ed.* 4. 6. 5 *H.* 6. 6. *Litt. Sect.* 218. So if the Tenant of the Land chargeable with a Rent ſeck, grant a power to diſtrain upon the Land for the rent to him that hath it; this is now become a Rent charge. *Dyer* 348.

So if one Coparcener upon a partition, to make an equality, agree that the other ſhall have a rent out of his part of the Land; this is a rent charge, for which the other may diſtrain, though there be no Deed for the Rent, nor Clauſe of diſtreſs in a Deed. 15 *H.* 5. 5.

3. *What*

3. What ſhall be ſaid a good rent by grant or reſervation, or not; and how it ſhall be taken.

In reſpect of the thing out of which it is grantable.

IF a Feoffment, gift in Tail, or a Leaſe, be made of a Manor, Lands, Meadows, Paſtures, Mill, or any ſuch like corporeal hereditament, rendring a rent, or a rent be granted out of any ſuch thing, is is good: So if it be out of the veſture or herbage of Land, or a Rectory or a meſualty. But a grant or reſervation of rent out of a thing not maynorable, as a Fair, Market, Rent, Tithes, Advowſon, Hundred, Fiſhing, common Office, the next avoidance of a Church, right of Land, Corrody, Multure of a Mill, Franchiſes, and the like incorporeal Hereditament, is not a good rent; for a rent muſt be always reſerved out of ſuch a thing to which the party may reſort for a diſtreſs. *Co.*7.27.38. *Co.*4.10. 49. *Plow.*157.138. *Co.*1. *part* 47. And yet if one be ſeiſed of a reverſion or remainder of Land after a Leaſe for Life or years, or gift in Tail, and grant or reſerve a rentupon this Land; this is a good rent, and when it comes in poſſeſ-

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ſion either by determination of the time in courſe, ſurrender, or otherwiſe, it will take hold of the land. *Co. upon Litt.* 144.47. *Plow.* 198.

If one that hath but a Leaſe for years of land make a Leaſe of it rendring rent, or grant a rent out of it; this is good during the Term: And if he grant for longer time, it is good during the Term. *Co.* 2.36. 14*H.*7.2. But if one be ſeiſed in Fee of *White Acre*, and poſſeſſed of a Term in *Black Acre*, and grant a rent out of both theſe for life; this rent ſhall iſſue out of *White Acre* onely: Yet both the Perſon and both the Acres ſhall be charged as long as the Term laſteth; and after the Perſon and *White Acre* onely. *Co. upon Litt.* 146.*Co.* 7.23.

If one be diſſeiſed of land, and after grant a rent out of it; this is void. And yet if the grant be by Fine or Indenture, it may be good by way of Eſtopell. *Co.* 2.53.

If one grant a rent reſerving a rent, or grant a rent iſſuing out of another rent; theſe grants and reſervations as to create a rent are void. *Co.* 10.60.1.59. And yet in the caſes before of a rent granted or reſerved out of things not may-

maynorable, albeit the grant or reſervation cannot be good as to the creation of a rent to charge the thing out of which it doth iſſue; yet it will be good to create an Annuity to charge the perſon of the grantor. *Kelw.* 161. *Co.* 6. 58. 10. 93.

Annuity.

A rent may be granted or reſerved by Fine or a Deed of bargain and ſale, as well as upon a Deed of Feoffment or Leaſe. *Co.* 2. 72. *Sta.* 27 *H.* 8. *chap.* 10. *Co. upon Litt.* 144. 193. A rent may be reſerved on a releaſe that doth enure to enlarge to make an eſtate; but not upon a releaſe that works by way of extinguiſhment or *mitter de droit.* A rent may be granted by will alſo, and therein alſo may be given a power to diſtrain as well as by Deed. *Co.* 1. 84. *Dyer* 348. But it cannot be had or claimed, nor is it grantable but by Deed, except in ſome ſpecial caſes. *D. & St.* 86. *Bro. Reſervation.* As upon a partition of land, and by a ſpecial Preſcription that he and his Anceſtors, whoſe Heir he is, have been ſeiſed of it, and uſed to diſtrain for it. *Co. upon Litt.* 146. 144. *Co.* 6. 58. 63.

In reſpect of the manor of granting or reſervation.

If one having an eſtate in *White Acre* grant 20*s.* out of [or from] *White Acre*, or 20*s.* of Annual rent to *I. S.* yearly taken

taken from *White Acre*, or to be taken at *White Acre*, or to be taken in or at *White Acre*, or out of his Coffers, with a clauſe, that if not paid he ſhall diſtrain in *White Acre* for it: Or thus, if I oblige my ſelf to *I. S.* and his heirs, in annual rent of 10*l.* which I take of my Manor of *S.* and I oblige my Manor aforeſaid to be diſtrained: Or thus, if one have a Manor, and ſay, I oblige my Manor of *C.* and all the goods in the ſame Manor being mine, to *I. S.* &c. in annual rent of 20*s.* to be diſtrained by the Bailiff of our Lord the King for the rent aforeſaid: Or if one by Deed in a way of Covenant to pay 10*l.* a year, and not by way of reſervation or grant to doe a thing, that as often as default ſhall be, he ſhall forfeit 10*l.* Theſe and ſuch like are not rents, but ſums in groſs, nor recoverable as rents, but by action of debt or covenant. *Dyer* 361. *Pl.* 133. *Dyer* 24. And if one grant 40*l.* a year out of his Coffers, or out of his clear gains, or out of the Land of a ſtranger, or out of a thing not chargeable with rent; in theſe and the like caſes it is not a rent, but an Annuity chargeable on the perſon onely. *Co.* 6. 58. 10. 93. All grants of rents after either

Sum in groſs.

Annuity.

either of these, or in any such like form, may be good to charge both the person and land. 46*Ed.*3.48.*Co.*7.23.*Kelw.*161. 4*Ed*.2.15.46.22. *Ass.*66.21*H.*7.4. *Dyer* 45.26*H.*8.5. *Co. upon Litt.*245.

If one grant a rent out of all his lands, and that if it be behind, he shall distrain in *White Acre* for it; this is good to charge the person and *White Acre* onely, not any other land. *Co.*7.23. So if he grant it out of one Acre, and if it be behind, that he shall distrain in another Acre; both the Manors are charged, the one with the rent, the other with the distress for the rent. *Co. Inst.* 147.9*H.*6.9. If one grant to another that he shall distrain for a rent of 40*s.* a year in *White Acre*, if it be not paid him yearly at *Michaelmas*; this is good to charge this land, but not to charge the person of the Grantor. *Plow.*139. *Co.*7.24. *Litt.*219, 220. If I have twenty Acres of land, and grant a rent of 20*s.* to be taken of every Acre of land; this is a good grant, and several out of every Acre 20*s.* 20*l.* in the whole. *Co. upon litt.* 147.

If a reservation of rent be in a Deed, and say not to whom; yet this is a good rent, and shall continue as long as the estate,

eſtate, and ſhall go to the heir or him in reverſion. *Dyer* 45. *Kelw.* 88. But if it be rendring a rent to a ſtranger who is no party to the Deed, this is void. 27 *H.* 8. 19. And yet if he be a party to the Deed, although he have no intereſt in the land, it is good enough. *Bro. Reſervation* 15. 12. *Plow.* 55. And if the reſervation of the rent be to the Leſſor, and a ſtranger who is no party to the Deed, it is void as to the ſtranger, and the Leſſor ſhall have the whole. So albeit the Leaſe be made by the Father and his eldeſt Son, rendring rent to the Son, or a Leaſe to begin after the Father's death, rendring rent to the Son. *Trin.* 12 *Jac*, *Oates Caſe adjudge.* If the eſtate be void upon which the render of rent is made, the rent is void alſo. 14 *Car. B. R.* If lands be given in frank marriage reſerving a rent, the reſervation is void till the fourth degree be paſt; and then it is good. 26. *Aſſ.* 66.

If one ſeiſed in Fee of land grant a rent out of it to *I.S.* for life, and after a clauſe that he and his heirs may diſtrain in the land for the rent; this is a good new grant of a new rent in Fee-ſimple over and above the grant for

life. *Coke upon Littleton*, 147, 148.

If one by Deed indented demiſe to *A.* for life with divers remainders over, rendring therefore to the Leſſor and his heirs a rent; this reſervation ſhall extend to all the eſtates: And if he in remainder accept the eſtate, he muſt pay the rent. *Co.*10.107.5.111. And if one leaſe for a year with theſe words, And if the parties ſhall agree for a new Leaſe for longer time, then for three years, rendring during the Term aforeſaid; this reſervation ſhall extend as well to the firſt year as to the three laſt years. *Co.*10.106.

If one grant a rent charge out of his land, provided that it ſhall not charge his perſon in an Annuity; that is a good rent as to charge the land, but not the perſon. And yet if it were without clauſe of diſtreſs with ſuch a *proviſo*, the *proviſo* were void, unleſs the Grantor did give the Grantee ſeiſin of the rent at the time of the grant. *Co.*6.58. *upon Litt.*146.

4. *The remedy or means to recover a rent, and the arrearages thereof.*

IF one have a Freehold rent, and have gotten actual ſeiſin thereof, and he after

after be diſſeiſed of it, he may have an aſſiſe to recover it, and damages for it, which in an aſſiſe he ſhall recover: But in a Reſcous he ſhall recover damages onely, and the thing diſtrained ſhall be taken as a diſtreſs. But if one that never had ſeiſin of a rent diſtrain, and a Reſcous be made, he cannot have an Aſſiſe, but he muſt have a Reſcous, *Co.* 1. 97. And here note, that the diſſeiſin of a rent is when the party is diſturbed in the means of recovery of his rent, which for a rent charge is ſaid to be five ways.

1. By Reſcous, which is when the party diſtrained, and the diſtreſs is reſcued; or being upon the land to diſtrain, he cannot be ſuffered.

2. Replevin, which is when an Action of Replevin is brought upon the diſtreſs taken.

3. Denier, which is the denying or not payment of the rent on the land when it is required.

4. Incloſure, which is when the party doth come to the place whence the rent doth iſſue, or he hath power to diſtrain, and it is incloſed by walls, or the like, that he cannot come at it; but if it be not newly, but were anci-

ently incloſed, then were it no diſſeiſin.

5. Foreſtalling, which is when the party is going to diſtrain for the rent, and the Tenant hearing of it doth foreſtall the way with force and arms, or threaten to kill or wound, ſo that he dare not go to diſtrain. The diſſeiſin of a rent ſervice is ſaid may be by Reſcous, Replevin and Incloſure. The diſſeiſin of a rent ſeck is ſaid to be by denying, incloſing and foreſtalling. *Co. upon Litt.* 160, 161. 153. *Litt.* 236, 237, 239, 240.

In ſome caſes a man may have an Aſſiſe to recover his rent; in ſome caſes he may diſtrain; in ſome caſes he may have an Annuity or an Action of debt; in ſome caſes he may re-enter upon the land for not payment of the rent; and in ſome caſes he hath his choice to doe the one or the other: But in caſe where a man may diſtrain, he may not diſtrain in any place but there where the diſtreſs is given; *Litt.* 48. *Plow.* 239. nor may he diſtrain after the eſtate is ended; nor may he diſtrain and keep the goods againſt a Replevin, albeit the Deed ſay he ſhall keep the diſtreſs againſt gages and pledges. *Co. upon Litt.* 145. 282.

If

If one at *Michaelmas* make a Leaſe for years rendring rent at *Michaelmas* or ten days after; in this caſe the Leſſor may bring an action of debt for the laſt year's rent, and ſuppoſe it to be due at *Michaelmas*. *Barwick's Caſe Trin. 9 Jac.*

If a Leaſe be made rendring rent on condition of re-entry for not payment, and the Leſſor re-enter, yet he may bring an Action of debt for the rent. And in the caſe where a re-entry is given, if the Leſſor make a demand duly, if after he receive the rent, yet it ſeems he may enter upon the Land. *Kelw.* 112. 153.

Rent ſervice.

The Lord may diſtrain for a yearly rent due from a Freeholder, but he may not have an Action of debt for it, or for any corporal ſervice, as long as the ſame doth continue; but when the rent is ended, an Action of debt will lie. *Co. of Copyhold*, 50. But ſome ſay that for a rent ſervice due upon a gift in Tail or Leaſe for life, he may onely bring an Aſſiſe or diſtrain; and that an Action of debt lieth onely for a rent ſervice reſerved upon a Leaſe for years. *Litt. Sect.* 213. 331. *Perk. Sect.* 693.

If one that hath a Leaſe of land for years, grant it over for a part of the

time rendring rent; in this case the Lessor may distrain or have an action of debt for this rent; and therefore it is taken for a rent service. *Plow.* 526. 9*H.* 5. 8. *Perk. Sect.* 693.

Rent charge.

If a rent charge be unpaid, the party that ought to have it may in some cases have an Assise for it, and in all cases either distrain for it, or he may bring an Annuity against the person of the Grantor, at his election, except one of the remedies be prevented by the Original agreement; as where a rent is granted, provided it shall not charge the person of the Grantor, *&c.* But where the party hath a double remedy, he may not make use of both: For if in case where the person is chargeable, and the Writ of Annuity doth well lie, if he bring this Writ or an Assise where it lieth, and make his plaint in the Assise, or declare upon the Writ of Annuity; by this the Land is discharged for ever. And if he once distrain and avow for it in a Court of Record, by this the person is discharged for ever. But the bare purchase of the Writ of Assise or Annuity onely doth not determine the election. *Dyer* 344. *Litt. Sect.* 219. *Co.* 7. 34. *Plow.*

34. *Plow.* 13. *Dyer* 362. *Co. upon Litt.* 145.

If one have a rent charge for years, and the Term expired, in this caſe he cannot diſtrain for the rent; *per* two Juſtices, *Paſ.* 10. *Car. B. R.* but he muſt have an Action of debt for it.

If a rent charge be granted with *proviſo*, that it ſhall not charge the perſon of the Grantor, and the rent is behind, and the eſtate is determined, ſo that now he may not diſtrain for it; in this caſe he may bring an Action of Debt, and charge the perſon. *Co.* 7. 37. *Dyer* 227.

If one have a rent ſeck, and it be not paid, he may diſtrain for it in three caſes. Firſt, where a woman hath it in part of her dower. Secondly, when a King is to have it. Thirdly, when a Parcener is to have it to make an equality of partition. But in all other caſes there is no remedy for recovery of a rent ſeck but by an Aſſiſe; nor can this be had neither, till he have got ſeiſin of the rent in a legal way. *Kelw.* 104. *Co.* 7. 28. 6. 56. 58. *Litt.* 235. Rent ſeck.

5. Who ſhall have the rent and remedy and upon whom it ſhall be charged, or not.

THE rent in moſt caſes doth follow the reverſion of the land, if there be any, as the ſhadow doth the body. *Co.* 5. 55. *Dyer* 5. Recoverers upon common recoveries ſhall have the ſame remedy for their rents by diſtreſs or action of debt againſt the Leſſee for years before attornment as the Recoverees had. *Stat.* 7 *H.*8. *chap.* 4. *Co. upon Litt. f.* 104.

Executors ſhall have the like remedy for rent charge and rent ſervices due to their Teſtator as their Teſtator had; and for the arrearages due in their Teſtator's time, they may diſtrain the Tenant of the land, whether he be heir or Feoffee to him that ſhould have paid it, or heir or Feoffee of the heir, or Feoffee, and ſo infinitely, iſſues in Tail or *Ceſtuy à que uſe*, or any other that come into the land from or under him that ſhould have paid it. *Stat.* 32 *H.* 8. *chap.* 37. If I make a Feoffment in Fee, gift in Tail, Leaſe for life or years of land, rendring rent to me, or a rent be granted out of land to me in Fee, in Tail, or for life, and the rent be in arrear, and I make my Executor

ecutor and die, and the land or rent descend to my heir; my Executor and not my heir ſhall have it, and the action of debt for it. *Co.*4.48.50.*Dyer* 375.*Co. upon Litt.* 162. If a rent be granted to me, my heirs and Executors, during the life of *I.S.* and for one half year after; in this caſe my Executor ſhall have this half year's rent, *Curia M.* 7. *Jac. Co. B. Watts Caſe.* But if a Leaſe be made for years rendring rent to the Leſſor and his heirs at *Michaelmas*, or within ten days after, and the Leſſor during the Term doth hap to die after *Michaelmas* before the ten days be expired; in this caſe the heir, not the Executor, ſhall have the year's rent, *Hil.*7 *Jac. Curia B.R.* .And if within the ten days he had granted away the reverſion, and the Tenant had attorned, the Grantee of the reverſion ſhall have the rent. *Co.* 11,12. If one ſeiſed in Fee of Land make a Leaſe for years of it rendring rent, and then deviſe the rent to a ſtranger by Will, and the Deviſee die: in this caſe it ſeems the Executors muſt have it, not the heir. *Dyer* 5.6. If the reſervation of the rent be to no body, the arrear ſhall go to the Executor, and the rent forwards as in the caſes before. So if the

the reſervation be to him or his heirs. *Dyer* 204. If one ſeiſed in Fee of a houſe make a Leaſe thereof, and of certain implements therein, for years, rendring rent to him, his heirs and aſſigns, and the Leſſor die; in this caſe the rent ſhall go to the heir all the time: But if the Leſſee had covenanted to pay ſo much money during the time; this ſum had gone to the Executor. *Dyer* 361.275. And if one grant a rent for life out of his land, and the rent is arrear in divers Feoffees times one after another, and the Grantee die, his Executors may have an action of debt againſt every one of the Feoffees for his time. But if a Tenant in Tail make a Feoffment, and the diſcontinuee charge the land, and after enfeoff the iſſue in Tail and die; the iſſue is remitted to his firſt eſtate, and ſhall not be charged with this rent. *Co.* 7.37. So if one have a rent charge or rent ſervice in Fee, or for life, and it be arrear, and after he grant away the rent to another, and the Tenant attorn, and then he die; in this caſe the Executor ſhall not recover the arrears, but they are loſt. *Co.* 7.37.

If one have a rent charge or rent ſervice *pur auter vie*, and the *ceſtuy que vie* die,

die, yet the party may have his remedy againſt the occupier of the Land by diſtreſs. As if one deviſe a rent out of land by will, with clauſe of diſtreſs to *B.* for the life of *C.* and the heir to whom the land charged doth deſcend doth leaſe it to *D.* the remainder to *E.* in Fee, and the rent is behind in the life of *D.* and *D.* die, and after *C.* die: Now in this caſe the land in the hands of him in the remainder ſhall be charged with theſe arrears, and the party may diſtrain for them. *Stat.* 32 *H.*8. *ch.*37. *Co.*6. 118.

All arrearages of rent incurred and due to the wife before or after marriage, the husband ſhall have, if he ſurvive her; as if ſhe be endowed of a rent, and take a husband and die, he ſhall have the rent arrear during the coverture, and remedy by the Statute of 32 *H.*8. *Co.*4. 51. *ſuper Litt.*3. 51. So if he make a Leaſe of his wife's land rendring rent, and ſhe die, he ſhall have the rent due in her life time. 9*H.*6. 52. And yet if the husband be ſeiſed of a rent in the right of his wife, and the rent incur, and the husband die; in this caſe the wife ſhall have the arrears: By 3 *Juſtices* 22 *Jac. B.R.* 9*H.*6. 43. 22 *Ed.* 3. 40. If any rent charge or

rent

rent ſervice be due to any ſingle woman who doth after marry, or to any married woman during the coverture, in theſe caſes the husband, his Executors or adminiſtrators, ſhall have the ſame remedy by diſtreſs or action of debt as the wife had. As if a feme ſole have a rent charge granted to her for life, and the rent be behind, and after ſhe take a husband, and the rent be behind again, and ſhe die; the husband may recover both theſe rents. *Stat.* 32 *H.*8. *ch.*37. *Co.*4.50. *F.N.B.* 121. *Co. upon Litt.* 162. If one grant a rent charge to *A.* and *B.* for 21 years if the Grantor live ſo long, and after *A.* and *B.* entermarry, and then the rent doth incur, and *A.* die, and after more rent doth incur; in this caſe the woman, and not the Executor of her husband, ſhall have all the rent before and after the husband's death. *Hill.* 22. *Jac. B.R.* the Court in *Burgers Caſe* 33 *H.*6. 20. If a woman and her ſecond husband leaſe the Land ſhe was endowed of by her firſt husband, rendring rent, and this is behind, and ſhe die, the ſecond husband, not the heir of the firſt husband, ſhall have this rent. *Broo. Rent* 10.

If a man ſeiſed of a Term of Land for

for 20 years in the right of his wife, leaſe the ſame Land for 10 years to a ſtranger rendring rent, the rent is behind, the husband die; it hath been ſaid the Wife, and not the Executor, ſhall have the rent. *Perk. Sect.* 834. But the contrary hath been adjudged *inter Blaxton and Heath King's Bench. Co. upon Litt.* 46.35. Yet the wife ſhall have the reſt of the Tearm. If the husband be poſſeſſed of a Tearm of land in the right of his wife, and he let part of it rendring rent and die, the wife ſhall not have this rent but the Executor of the husband. *Dyer* 180. 107. 104.

If *A.* a Tearmor die, and make *B.* his Executor, and *B.* make a Leaſe of part of the Tearm to *C.* rendring rent and die inteſtate, and *D.* get an adminiſtration of the goods of the firſt Teſtator; in this caſe *D.* ſhall not have the rent, by *Juſtice Haughton Hill.* 18. *Jac. B. R.* becauſe he comes about it. And if *A.* Tenant in tail diſcontinue to *B.* who doth leaſe to *C.* for years rendring rent, arrearages do incur, *A.* dies, his iſſue doth recover againſt *B.* in a *Formedon*; yet the Leſſee ſhall pay the arrearages to *B.* by *Juſtice Haughton* 18 *Jac. B. R.*

If

If one ſeiſed of land as heir of the part of the mother, make a Feoffment in Fee of it, rendering rent to him and his heirs; this rent ſhall go to the heirs of the part of the father: But if it had been a Leaſe for life, or gift in tail, it had gone to the heirs of the part of the mother. If the husband have a Leaſe in the right of his wife rendring rent, and the rent is behind during the coverture, and ſhe die; in this caſe he ſhall be charged by a ſuit for this rent after her death. *Kelw.* 81. 10 *H.* 6. 11.

6. *Where a rent ſhall be ſaid to be determined and extinct in all or part, or not, but ſhall be apportioned; and where it ſhall be apportioned, or not.*

WHere the eſtate to which the rent is annexed doth determine, there the rent as to the land is determined. And yet there in ſome caſes the perſon ſhall be charged after with it in an Annuity. If there be a Leſſee for life, or years determinable upon life, and this Leſſee make a Leaſe for years, reſerving rent to be paid at the four quarter Feaſts, and the life die, the rent is gone; and if he die before the quarter-day, the quarter's rent is gone. *Co.* 10. 127. So if one make

make a Leaſe at will rendring rent, and after the Leſſor doth determine the Will, the rent is gone. *Termes Ley.* So if a rent be granted in reſpect of an Office, and the Office be determined, the rent is gone. *Plow.*381. If all the land out of which the rent iſſueth be recovered from him that hath a Title before the day of payment; as if there were a Judgment againſt the Leſſor before the Leaſe, and after the Leaſe Execution is ſued out by an *Elegit* or otherwiſe, ſo that the Leſſee is rightfully evicted out of all the land; or a Diſſeiſor charge the land, and the Diſſeiſee doth recover it in an Aſſiſe, or the like; in theſe caſes all the rent is gone. But if the eviction be but of a part of the land, there ſhall be an apportionment of the rent. And if one that hath land rightfully charge the land, and another that hath no right doth recover it in a feigned action, this will not determine the rent. *Co.*10.127. *Plowd.*71.134. 37 *Eliz. B. R. Dayes Caſe.* And if a Diſſeiſee releaſe his right to the Diſſeiſor after his grant of the rent charge, the rent will continue. But if the Diſeiſſee enter and make a Feoffment, by this the rent is gone. *Co. upon Litt.* 177.

If

If a rent be granted to one and his heirs in Fee, or to a Corporation in Fee, and the man die without heir, or the Corporation be dissolved, it seems the rent is gone. 27*H.*8.10. If *A.* give lands to *B.* and the heirs of his body rendring rent, and *B.* doth bargain and sell the land to *C.* and his heirs, and therein covenant that *C.* shall enjoy it after the Annunciation of *Mary* next free from all incumbrances, and before that day a common recovery is had against *C.* in which *B.* is vouched to the use of *C.* and his heirs; in this case the rent is not gone. *Hill.*20. *Jac. B. R. Greenway* and *Tuckfield's Case. Ewrs Case* 42 *Eliz. Co. B.* For this rent is reserved by the donor before, or at least at the time of the entail made; and is as if Tenant in tail grant a rent charge out of the land, and then suffer a Recovery, this doth affirm the rent: Or as when the Lord Paramount doth purchase the Tenancy Paravaile, the Mesne shall have the rent. But if after the entail made, the Donor doth grant a rent out of the reversion, and after the Tenant in tail suffer a Recovery; in this case the rent is gone. *Co.* 1. *in Capels Case.*

If

If a Leſſee for life make a Leaſe for years rendring Rent, and after the Leſſee for life ſurrender his Leaſe, the rent is gone by *Ch. Juſtice Bridgman.* But if one make a Leaſe for years rendring rent, and after grant the rent to *I. S.* and the Tenant attorn, and after the Leſſee for years doth ſurrender; yet the rent doth continue, and it ſeems he may have an Action of debt for it. So if Leſſee for years of land grant a rent charge out of the land, and then ſurrender his eſtate; the rent is not gone. *Co.* 8.144. 20 *Ed.* 4.13. *Plow.* 198. If there be a Leſſee for life rendring rent, and the Leſſor confirm the Land to the Leſſee and his heirs without any reſervation of rent; in this caſe the rent is gone. *Bro. Extinguiſhment* 28.

If two Joyntenants be, and one of them grant a rent out of the Land and die; in this caſe the rent is gone, and the ſurvivor ſhall hold it diſcharged. But if the ſurvivor had accepted a releaſe of the right of his companion, contrary. *Co.* 6. 16.

If one have a rent charge iſſuing out of Land to him and his heirs, and he purchaſe the Fee-ſimple of all or any

part of the Land out of which the rent doth iſſue; by this the rent is gone for ever. *Co.* 4. 38. *D. & St.* 35. *Dyer* 45. So if the whole Land deſcend to him in Fee-ſimple, the rent in future is gone. Otherwiſe it is where the Father doth purchaſe but part of the Land out of which the rent doth iſſue, and this land doth deſcend upon the Son; here the rent is not extinct, but apportioned, *Co.* 4. 49. and he hath not ſo much as an Annuity left for his money. *Co. upon Litt.* 148. As he hath in caſe where the diſcharge is by Act of God, or by Act of Law; for there though the rent be gone, yet a writ of Annuity will lie for the rent to charge the perſon: as if *Tenant pur auter vie* grant a rent charge to one for 21 years, and *Ceſtuy que vie* die, the rent is gone as to the Land, but the perſon chargeable during the Term. So if the Land out of which the rent iſſueth is recovered by one that hath an elder Title. *Co. upon Litt.* 148. But if a man that hath a rent ſervice purchaſe part of the Land out of which it goeth; in this caſe the rent, if it be ſeverable, ſhall be apportioned; but if it be an individable rent, as a Horſe or the like, it is all gone. *Litt. Sect.*

Sect. 222. And if the Grantee of a rent charge purchaſe part of the Land, and the Grantor by his Deed reciting this purchaſe, doth Grant that he ſhall diſtrain in the reſidue; by this the rent may be created again. *Co. upon Litt.* 148. And yet if he that hath a rent charge releaſe part of it to the Tenant of the land and reſerve the reſt; this is good for the reſt. Or he may grant away part of it, and with the attornment of the Tenant this will be good, and the rent ſhall be divided. *Co. upon Litt.* 148.

If a man make a Leaſe for life or years, reſerving rent, and the Leſſee ſurrender part of the Land to the Leſſor; in this caſe the rent is not gone, but ſhall be apportioned. So if the Leſſor recovereth part of the Land in an Action of Waſte, or entreth into part for a forfeiture, the rent ſhall be divided. So if the Leſſor grant part of the reverſion to a ſtranger, the rent ſhall be apportioned. So if Tenant by Knights ſervice deviſe by his Will the reverſion of two parts of his land; in this caſe the rent ſhall be divided. *Co. upon Litt.* 148.

7. *Where a demand or requeſt, or a tender of Rent, is neceſſary, or not.*

To have an action or diſtreſs for any Rent.

AN Action may be brought, or a diſtreſs taken, for a rent charge or rent ſervice, without and before any demand made of it. But an Aſſiſe cannot be brought for a rent ſeck and the arrearages thereof, untill the rent be demanded. And if by the Deed or Will, by which the rent is created to be paid upon the land, it be ſet down, that the rent charge or rent ſervice before a diſtreſs be taken muſt be demanded; in this caſe there need not to be a Demand: but if it be payable at another place out of the Land, *contra. Dyer* 348. *Co.*7. 28. *Kelw.* 153. *Co. upon Litt.* 144. 202. *Co.* 6. 56. *Selden's Caſe*, 17 *Car. C.B.* If a rent be granted with condition, that if it be arrear, the Grantee ſhall diſtrain; in this caſe the Grantee need not demand it. *Plow.* 70.

To have a Re-entry, or *Nomine pœnæ.*

In moſt places where a common perſon would enter into Land upon a condition for not payment of rent, or will have a penalty or *Nomine pœnæ* of a greater ſum forfeit for not payment of the

the rent being a leſſer ſum; there muſt be a demand duly made of the rent e'er he can enter, or have the *Nomine pœnæ*. *Co. upon Litt.* 153. 301. 202. *Co.* 4. 72. And this holdeth true, though it be not expreſſed in the Deed that it ſhall be demanded; and albeit no man be upon the Land to tender it, and albeit the rent be payable out of the Land and County. And yet if the agreement be expreſſed, that if the rent be behind, he that is to have the rent ſhall enter, or the eſtate ſhall ceaſe without demand; here perhaps a demand may not be needfull. *Dyer* 329. 13. 79. 51. *Co.* 6. 56. *Plow.* 172. 70. *Co.* 10. 129. 2 *H.* 7. 14. Yet I have ſeen the report of a Caſe thus: If a Leaſe be made rendring rent, and that if it be behind, the Leſſee ſhall forfeit three ſhillings four pence in name of penalty, that in this caſe there needs no demand as in the caſe of Re-entry. *Trin.* 36 *Eliz. Co. B. Tbins Caſe.*

If I deviſe Land by will to *I. S.* on condition he pay 20 *li.* a year out of it to *K. L.* at two Feaſts; in this caſe there needs no demand. *Dyer* 348. But if one deviſe a rent by Will to *I. S.* and willeth that if it be not paid, the Executors or

I. S. shall have the Land; in these cases there must be a demand. *Molineaux case Pasc. 5 Jac. B. R.*

If a rent be granted with condition to re-enter, or *Nomine pœnæ* for not payment, he that is to pay the rent must take care to tender it to save the forfeiture. 2 *H.* 7. 8.

8. *What demand or tender must be made, and how, and what shall be said a good demand or tender of Rent or not.*

IN all cases where a request or demand of rent is needfull, it must be duly made in all circumstances, or it will not be sufficient to give a man any advantage.

The demand of a rent seck to inable an action must be made thus: After the rent is due and seisin had of it, the party to have it, or some body for him, must be upon the principal place in the land, the last part of the day of payment, or if no tender be made of it on that day, then at any time after the day, and there demand the rent; and if the Tenant or some other for him be not there ready to pay it, this is a denial in Law, upon which

which he may have an aſſiſe, and therein ſhall recover the rent and arrearages thereof, and coſts and damages. But if there were a tender by the Tenant the laſt part of the day, and no body to receive it; in this caſe he hath no remedy for the preſent, unleſs he can meet with the Tenant of the Land in ſome part of the Land: and therefore in this caſe, the beſt way is to be on the Land the next day of payment, the laſt part of the day, and then demand the rent and arrearages thereof; and if no body be there ready to pay it, this is a denial on which he may have an Aſſiſe. *Litt.* 235. *Cr.* 7. 28. *Co. upon Litt.* 153. 154. A demand to enable a diſtreſs may be made at any time after the day, and is good enough. *M.* 40, 41 *Eliz. Stanleys caſe. Co. upon Litt.* 144. 153.

The demand of a rent to gain a re-entry into Land, or *Nomine pœnæ*, muſt be made thus: Firſt, by and of the right perſons. And for this, theſe things are to be known. For the perſons.

1. If a leaſe be made for years rendring rent, on condition, that if it be arrear forty days after the day, that the Leſſor and his heirs ſhall re-enter, and

the Leſſor demand it, and after die; this is a good demand, and his heir ſhall take advantage by it, and may enter. But if the Leſſor die after the day, and then the heir demand it, *contra. D. & St.* 35. 13 *H.* 4. 17.

2. If two make a Leaſe rendring rent on condition, that if it be behind and demanded, they ſhall re-enter, and one of them die; the Survivour may demand it. Or if the Leaſe be made to two on ſuch a condition, and one of them die; the rent may be demanded of the Survivour of them: *Bro.* 207. 41 *Ed.* 3. 16, and accordingly a tender may be made of rent. And therefore a tender to one Joyntenant or Copartner, or by one Joyntenant, is held to be good. *Bro. Tender* 10. 19.

3. The party that is to demand may do it by his Attorney or Servant, as well as by himſelf.

For time. Secondly, for time, it muſt be made the laſt day given for the payment thereof, and the laſt part of the day, ſo long before the Sun ſet, and it be dark, that the money to be received may be conveniently numbred by day-light; and he muſt continue his demand till it be night;

night; and the Leſſor is not bound to demand at any other time. *Co. upon Litt.* 282. *Noy* 98. *Co.* 4. 72. *Plow* 72. *Dyer* 329. 130. *Co* 6. 56. When the Leſſee hath two times given him for payment of his rent, as when the Leaſe is rendring rent at *Michaelmas*, or within ten days after, or in like manner; in this caſe the demand muſt be made the laſt part of *Michaelmas day*, and the laſt part of the ten days. For if the Leſſee tender it the firſt day, and the Leſſor be not there, and he tender it not the laſt day, and the Leſſor demand it at this day onely; this is not ſufficient, for the Leſſee hath an election to pay it on which of the days he pleaſe. But if the laſt day be put in the condition onely, provided, that if it be behind ten days after the Leſſor ſhall re-enter; in this caſe it need not be demanded at *Michaelmas*, but may be demanded the laſt part of the ten days onely. *Perk. Sect.* 836. *Bro. Tender* 41. 2 *Henr.* 7. 14. *Co.* 7. 28. 10. 29. *Coke upon Littleton* 207. And then and not at any other time the party that is to pay the rent is bound to render it, when he that is to receive it is bound to demand it.

Bro.

Bro. Tender 23. *Co. upon Litt.* 211. But here we muſt obſerve that there are four times of payment of rent. Firſt, voluntary, but not ſatisfactory, and yet good to ſome purpoſe: as if Leſſee, Donee, *&c.* pay the rent before the day; this is good to give ſeiſin, to enable him that hath it to bring an Aſſiſe. The ſecond time is voluntary, and ſatisfactory in ſome caſes: as if it be paid the morning of the laſt day, and the Leſſor die before the end of the day; this is good againſt the Heirs and executors. The third is the legal and abſolute ſatisfactory time, which is a convenient time before the laſt inſtant of the laſt day, and then it muſt be tendred. The fourth is ſatisfactory, but not voluntary, but coercive, and by ſuit. *Coke* 10. 127.

For place. 3. For place, the demand muſt be made upon ſome part of the Land out of which the Rent doth iſſue, (if no other place be expreſſed) and upon that part which is moſt notorious; as at the Porch and Fore-door of the Capital Meſſuage, (if any be) and not at the Back-door, or at another Houſe: and if no houſe be, then at ſome gate or ſtile upon ſome High-way going through

through the Land: or if one place be as notorious as another, then at either of them, or there, and not elſewhere, the rent muſt be tendred. And if there be two places of payment, as yielding the rent at ſuch a ſtile, or in the Church of *Dale or Sale*, or in the Houſe, or the like: there demand muſt be made at both, for the Leſſee may tender at either at his choice; and where he may tender, the other muſt require it. So if it be paying at or in a place, the demand muſt be at or in the place. And if by expreſs agreement it be to be paid at a place out of the Land, the demand muſt be at the moſt eminent place there where it is to be paid, and then it need not be demanded on the Land. *Co. upon Littleton* 201. 158. 153. 202. 10. 129. 4. 72. 6. 46. *Dyer* 329. 72. 130. *Noy.* 98. And the Leſſor is not bound to demand it in any other place nor is ſuch a demand good. *Bro. Tender* 11. And though the Door of the houſe be open, and the party that is to demand ſee him that is to pay in the Houſe, he need not go in to demand it, but it is ſufficient to do it at the Door. *Coke ſuper Litt.* 153. And there and not at any other place the party that is to

pay

pay the rent is bound to tender it, where he to whom it is to be paid is to demand it. *Plow.* 172. *Coke upon Littleton* 201. 105. But by agreement of the parties, it may be tendred, and received before the day in any place. *Perk. Sect.* 836, 837, 838. And ſo perhaps at the day, if the agreement be made of as high a nature as the firſt agreement was.

For the manner.

4. For the manner of the demand, he muſt then and there by himſelf, or ſome other for him, make an actual or verbal demand of the rent; and therein it is good to ſay how much it is, and to ſet forth his readineſs to receive it, after this manner:

Here I demand of *I. S.* ten pound rent due to me at the Feaſt of, *&c.* for a Meſſuage, *&c.* which he holdeth of me by Leaſe, *&c.* And there let him remain untill it be ſo dark, that he can not ſee to tell the money. But a demand of more than the rent, is a good demand of the rent. *Dyer* 329. 130. 19. 51. *Plow.* 70. *Noy* 98.

And accordingly, he that maketh tender of rent, muſt make a real tender; and it is not ſufficient to doe it in ſhew onely, for he muſt prove he had and ten-

tendered ſo much money as the rent is.

And if it be to be paid on the Land, it ſeemeth the Leſſor muſt doe the firſt Act, that is to ſay, demand it, before the other is bound to pay it; and the other is not bound to tender it, till he demand it. But if it be to be paid at a place out of the Land, then the Leſſee is bound to doe the firſt Act, that is to ſay, tender it at his peril. But it is good in theſe caſes to doe too much, and to have ſubſtantial witneſſes to prove what men doe. Abundant warineſs hurts not. *Abundans cautela non nocet.*

And if a demand of rent be not made for time, place and manner as is aforeſaid, it is not good. And therefore, if one make a Leaſe of a Houſe and divers Lands and Woods to another for years, rendring one hundred pound rent at *Michaelmas*, provided that if the rent be behind ten days after *Michaelmas*, the Leſſor ſhall re-enter, [or ſhall forfeit ten pound in name of penalty;] in this caſe the Leſſor if he will take advantage of the condition, muſt come the laſt part of the laſt of the ten days, time enough before Sun-ſet to tell one hundred pound,

to

to the House, and there demand the rent, and continue there till Sun-set ready to receive the money. *Bro. Disseisin 69.*

Modus & conventio vincunt legem.
Et, Volenti non fit injuria.

And yet by agreement of the parties, it may be otherwise; for manner and agreement overcome the Law. And he who is willing cannot be wronged. *Coke 7. 28. 25. 40. Dyer 78. 51. Brooke 68.* And in all these cases, where a tender is requisite, and legally made, it giveth as much advantage to him that doth tender the rent, albeit the party refuse it, as if he did accept it. *Co. upon Litt. 207. 206. 209.*

PRE-

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ff. Curia Baronis J. C. Militis Dom' Manerii præd' ibidem tent' die Lunæ 14. die Septembris, Anno Regni Domini Caroli Secundi, Dei gratia Angliæ, Scotiæ, Franciæ & Hiberniæ Regis, fidei Defensoris, &c. tertiodecimo, coram T.P.gen' Seneschallo ibidem. *Manerium de H.*

A.B. esson' de communi esson' per C.L.
E.H. esson' de secta Cur' per G.M. &c.

Homagium.

Abel Byram
Bertrand Capel
Chrisippus Dukeson
Dimmock Ellis
Everardus Finch
Ferrandus Guy
Gabriel Hedder
Helias Johnson
Jacob Killingworth
Kenelmus Loder
Lancelotus Minors
Milo Nowell

} Juratores.

S *Defalt*

Defalt' liber' Tenen'.

Juratores præd' ſuper ſacramentum ſuum præſentant quod vj d. A.B, vj.d. C. D. &c. ſunt liberi Tenent' hujus Manerii, & debent ſectam Cur', & ad hunc diem fecerunt defalt. Ideo quilibet eorum in miſericordia prout patet ſuper eorum capitibus.

Defalt' Tenen' per Copiam Rotulorum Cur'.

Item Juratores præd' ſuper ſacramentum ſuum præſentant quod vj.d. E. vj.d. F.G.H. &c. ſunt Tenentes per Copiam Rotulorum Cur' & debent ſectam Cur' & ad hunc diem fecerunt defalt'. Ideo quilib' eorum in miſericor'prout patet ſup' eor' capitib.

Obitus liberi Tenentis.

Præſentat' eſt etiam per Homagium præd' quod G. E. qui tenuit liberè de Domino hujus Manerii unum Cotagium & quatuor acras & tres rodas terræ cum pertin' in A. infra Manerium præd' per fidelitatem, ſectam Cur' & reddit' per annum 4d. citra ultim' Cur' obiit de tali ſtatu

ſtatu ſuo inde ſeiſit'. Et quod quidem F.E. eſt ejus filius & proximus hæres, ætatis duodecim annorum. Et ad hanc Cur' venit præfat' F.E. & ſolvit Dom' pro Relevio 3 d. & fecit fidelitatem, &c.

Alienatio liberi Tenentis.

Item Juratores præd' dicunt ſuper ſacramentum ſuum præd' quod C.L. qui tenuit liberè de Domino hujus Manerii unum meſuagium, &c. cum pertinentiis in A. infra Maner' præd' per ſcriptum ſuum indentat' geren' dat' primo die Maii, Ann' regni dicti Dom' Regis nunc Angl', &c. duodecimo, conceſſit omnia & ſing' præmiſ. præd' cum pertin' cuidam H.D. hæred' & aſſign' ſuis imperpet' Habend' & tenend' omnia & ſingula præmiſſa præd' cum pertin' præfat' H. D. hæred' & aſſign' ſuis imperpetuum, Tenend' de Capitalibus Domino vel Dominis feodi illius per Conſuetud', reddit' & ſerviciainde prius debit' & de jure conſuet'. Quæ quidem præmiſſa præd' H.D. tenet de Domino hujus Manerii p fidelitatem, ſectam Cur' & reddit' per annum 2s. Et ad hanc Curiam fecit Domino fidelitatem, &c.

Legatio tenementorum liberi Tenentis.

Compertum eſt etiam p Homagium ibidem quod H. D. qui tenuit liberè de Dom' hujus Manerii duo meſuagia ſive tenementa cum pertin' in A. infra Manerium præd' per fidelitat' ſectamCur' & reddit' per annum 8d. obiit inde ſeiſit', & per ult' volun' ſuam in ſcriptis geren' dat' primo die Februarii, Anno regni dicti Domini Regis nunc tertiodecimo, dedit & legavit meſuagia ſive tenem' præd' cum pertin' cuidam H.D. filio ſuo, Habend' & tenend' meſuagia ſive tenementa præd' cum pertin' præfat' H. D. filio hæred' & aſſign' ſuis imperpetuum. Ideo præcept' eſt Ballivo diſtringere præd' H. D. ad ſolvend' Domino Relevium, & etiam diſtringatur ad faciend' fidelitat'.

Diſtring'.

Surſumredditio tenementorum Cuſtomar' in feodo per manus duorum Cuſtomar' tenen' extra Cur'

Compertum eſt etiam per Homagium ibid' quod R.B. unus Cuſtomar' tenen' hujus Manerii, qui tenuit de Dom' hujus Manerii

Manerii per Copiam Rotulorum Cur' ſecundum conſuetud' Manerii præd' unum meſuag', tres acras terræ, duas acras prati, & quatuor acras paſturæ cum pertinen' in A. infra Manerium præd', citra ult' Cur' & extra Cur' ſurſumreddidit in manus Domini per manus A. B. & C. D. duorum Cuſtomar' Tenen' Manerii præd' ſecundum Conſuetud' Manerii illius tenementa præd' cum pertin' Ad opus & uſum J.B. hæred' & aſſign' ſuor' imperpetuum, Tenend' de Dom' per virgam ad voluntatem Domini ſecundum Conſuetudinem Manerii præd'. Cui quidem J.B. Dominus per Seneſchallum ſuum conceſſit inde per virgam ſeiſinam, Habend' ſibi & hæred' ſuis, ac tenend' de Dom' per reddit' per annum quinque ſolidor', & alia ſervicia inde prius debit' & de jure conſuet'. Et dat Dom' de fine pro ingreſſu ſuo inde habend' 40 s. fecit fidelitatem, & admiſſus eſt inde tenens.

Simile ad terminum vitæ.

Compertum eſt etiam per Hom' ibid' quod W. G. qui tenuit ut ſupra unam virgat' terræ cum pertin' in A. infra Maner' præd', citra ult' Cur' & extra Cur'

ſurſum reddidit in manus Dom' per manus G.H. & S. T. gen' duor' Cuſtomar' Tenen' Manerii præd' ſecundum Conſuetudinem Manerii illius præd' virgat' terræ cum pertin' Ad opus & uſum præd' W.G. pro term' vitæ ſuæ naturalis; Et poſt deceſſum ipſius W. G. tunc ad opus & uſum L.D.Ar' pro term' vitæ ſuæ naturalis; Et poſt deceſſum ipſius L. D. tunc ad opus & uſum rectorum hæred' præd' W.G. imperpetuum; Tenend' de Dom' per virgam ad voluntatem Dom' ſecundum Conſuetudinem Manerii præd. Et dictum eſt per Homagium præd' quod præd' W. G. citra ult' Cur' obiit. Et modo ad hanc Cur' venit præfat' L. D. & petit ſe admitti ad præd' virgat' terræ cum pertin'. Cui quidem L.D. Dom' per Seneſchallum ſuum conceſſit inde per virgam ſeiſinam; Habend' & tenend' eidem L.D. & aſſign' ſuis pro termino vitæ ſuæ natur', & poſt deceſſum ipſius L. D. tunc ad opus & uſum rectorum hæred' præfat' W.G. imperpetuum, ac tenend' de Domino per reddit' per annum viginti ſolid' & alia ſervicia inde prius debit' & de jure conſuet'. Et præd' L. D. dat Domino de fine pro ingreſſu ſuo ad præd' virgat' terræ cum pertin'

habend'

habend' ſexaginta ſolid' & fecit fidelitatem, & admiſſus eſt inde tenens.

Aliter pro vita alterius.

Compertum eſt per homagium ibid' quod A. L. vid' quæ tenuit ut ſupra ad termin' vitæ ſuæ ſex clauſa prati & paſturæ vocat', &c. modo in tenura ſive occupat' cujuſd. W. L. jacen' & exiſten' in E. infra parochiam de A. prox' adjungen' quibuſdam paſturis vocat' *Paſture-grounds* ibidem cujuſdam C. D. ex occidentali parte, & quoddam pratum ibid' vocat' *Leaſe-Meadow* ex orientali parte eorundem; & unum clauſum paſturæ vocat' *Sleethdole*, continens per æſtimat' ſeptem acras, (plus vel minus) jacen' & exiſten' in E. præd' infra præd' parochiam de A. prope adjungen' cuidam Paſturæ ibid' vocat' *Paſture-grounds* cujuſdam E. M. ex parte orientali ejuſdem; & duas Paſturas (Angl. *Paſture-grounds*) vocat' *Kingſtones* & *Newelties*, continentes per æſtimationem octo decem acras, jacen' & exiſten' in E. præd' prope adjungen' cuidam Paſturæ ibid' cujuſdam W. J. gen' ex parte boreali, & quibuſd' terris & paſcuis modo in tenura cujuſd'

Mariæ Hally viduæ ex parte auſtrali earund', citra ult' Cur' & extra Cur' ſurſumred' in manus Dom' per manus J.F. & G.K. duorum Cuſtomar' Tenentium Manerii præd' ſecundum Conſuetud' Manerii illius præd' ſeperal' clauſa prati & paſturæ cum pertin', ad opus & uſum J.L. gener' pro termino vitæ ipſius A.L. Tenend' de Dom' per virgam ad voluntatem Dom' ſecundum Conſuetudinem Manerii præd' Et dictum eſt per Homagium præd' quod præd' A.L. citra ult' Cur' obiit. Et modo ad hanc Cur' venit præfat' J. L. & petit ſe admitti ad præd' ſeparal' clauſa prati & paſturæ cum pertin'. Cui Dom' per Seneſchallum ſuum conceſſit inde per virgam ſeiſinam, Habend' & tenend' eidem J. L. & aſſign' ſuis pro termino vitæ ipſius A. L. ac tenend' de Dom' per reddit' per annum 40 s. & alia ſervicia inde prius debit' & de jure conſuet'. Et præd' J. L. dat Domino de fine pro ingreſſu ſuo inde habend' centum ſolid', & fecit fidelitat', & admiſſus eſt inde tenens.

Aliter ſur ſettlement in Mariage.

Compertum eſt per Homagium ibid' quod

quod J.B. qui tenuit ut ſupra unum meſuagium ſive tenement' vocat' *Horners*, quinquaginta acras terræ, quadraginta acras prati, triginta & ſex acras paſturæ, & centum & viginti acras mariſci cum pertin' in A. infra Maner' præd', citra ult' Cur' & extra Cur' ſurſum reddidit in manus Domini per manus H.A. & J.V. duorum Cuſtomar' Tenen' Manerii præd' ſecundum Conſuetudinem Manerii illius præd' meſuagium ſive tenementum & cætera præmiſſa præd' cum pertin', Ad opus & uſum præd' J. B. & hæred' & aſſign' ſuorum, uſque ad ſolempnizationem cujuſdam intenſi Maritagii (permiſſione divina) cito habitur' & ſolempnizatur' inter quendam C. D. filium & hæred' apparentem præd' J. B. ex una parte, & quandam A.D. de A. præd' Spinſter ex altera parte; Et ab & immediate poſt ſolempnizationem ejuſdem Maritagii tunc ad opus & uſum præd' J. B. pro & durante termino vitæ ſuæ naturalis; Et ab & immed' poſt ejus deceſſum, tunc ad opus & uſum S. uxoris ejus pro & durante termino vitæ ſuæ natural'; Et ab & immed' poſt deceſſus Anglice *the deceaſes* ipſorum præd' J.B. & S. uxoris ejus, & deceſſum eorum

ſu-

ſuperviventis, tunc ad opus & uſum præd' C. B. pro & durante termino vitæ ſuæ naturalis, Et ab & immediate poſt deceſſus ipſorum præd' J. B. & S. uxoris ejus & C.B. & deceſſum eorum ſuperviventis, tunc ad opus & uſum præd' A. uxoris intenſe præd' C.B. pro & durante termino vitæ ſuæ naturalis; Et ab & immediate poſt deceſſus ipſorum præd' J. B. & S. uxoris ejus, C. B. & A. uxoris ſuæ intenſe, & deceſſum eorum ſuperviventis, tunc ad opus & uſum hæredum de corpore præd' C. B. ſuper corpus præd' A. legitime procreat' vel fore procreand'; Et pro defectu talis Exit', tunc ad opus & uſum hæred' & aſſign' præd' C.B. imperp': Tenend' de Dom' per virgam ad voluntatem Dom' ſecundum Conſuetudinem Manerii præd'. Qui quidem J. B. & S. uxor ejus citra ult' Cur' obierunt. Et modo ad hanc Cur' venit præd' C. B. in propria perſona ſua, & petit ſe admitti ad præd' meſuagium ſive tenementum & cætera præmiſſa præd' cum pertin'. Cui Dominus per Seneſchallum ſuum conceſſit inde per virg' ſeiſinam, Habend' & tenend' eidem C. B. & aſſign' ſuis pro termino vitæ ſuæ naturalis, Reman' inde prout ſuperius

perius limitatur, Ac tenend' de Domino per reddit' per annum 5os. & alia ſervicia inde prius debit' & de jure conſuet'. Et dat Domino de fine pro ingreſſu ſuo inde habend' ſex libras, fecit fidelitatem, & admiſſus eſt inde tenens.

Aliter ſuper Conditionem non performat'

Compertum eſt etiam per Homagium ibid' quod H.R. qui tenuit ut ſupra unum meſuagium ſive tenementum, decem & octo acras terræ jacen' in communibus Campis de A. infra Manerium præd', & viginti acras prati jacen' in quodam Prato in A. præd' vocat' *Hughes Mead*, Alias, ſcilicet, primo die Maii, Anno Domini 1659. extra Cur' ſurſum reddidit in manus Dom' per manus H. J. & N. B. duorum Cuſtomar' Tenen' Manerii præd' ſecundum Conſuetud' Manerii illius præd' meſuagium ſive tenementum & cætera præmiſſa præd' cum pertin' Ad opus & uſum C. D. hæred' & aſſign' ſuorum imperpetuum, Sub hac tamen Conditione, quod ſi præd' H.R. hæred' vel aſſign' ſui ſolverent vel ſolvi cauſarent præfat' C.D, Executor', Adminiſtr' vel

vel aſſign' ſuis, cent.libr' legalis monetæ Angl' ad vel ſup ſecundum diem Maii qui foret in an' Dom' Milleſimo ſexcenteſimo ſexageſimo, tunc ſurſum reddit' præd' foret vacua & nullius effectus, aliter ſtaret in plena poteſt' & virtute. Et modo ad hanc Cur' venit præd' C.D. in propria perſona ſua, & petit ſe admitti ad præd' meſuagium & cætera præmiſſa præd' cum pertin'. Cui Dom' per Seneſchallum ſuum conceſſit inde per virgam ſeiſinam, Habend' & tenend' eidem C.D. hæred' & aſſign' ſuis imperpetuum, Tenend' de Domino per virgam ad voluntatem Domini ſecundum Conſuetudinem Manerii præd', ac per reddit' per annum decem ſolid' & alia ſervicia inde prius debit' & de jure conſuet'. Et dat Domino de fine pro ingreſſu ſuo inde habend' centum ſolidos, fecit fidelitatem, & admiſſus eſt inde Tenens.

Conceſſio tenementorum Cuſtomar' per Dominum Manerii ad terminum vitæ, Remanere in Tallio, Remanere in feodo poſt Abatamentum.

Compertum eſt etiam per Homagium ibidem quod quidam O. B. Miles defunct.

funct' tenuit de Domino hujus Manerii die quo obiit ſibi & hæred' ſuis ad voluntatem Domini ſecundum Conſuetudinem Manerii præd' unum meſuagium ſive tenementum, viginti acras terræ, viginti acras prati, quadraginta acras paſturæ, triginta acras boſci, quadraginta acras jampnorum & bruere, quinquaginta acras more, & centum acras mariſci cum pertin' in A. præd' infra Manerium præd'. Et quod præd' O. obiit de tali ſtatu ſuo inde ſeiſit' per ſex annos jam ultim' elapſos & amplius. Et quod quidam H.R. in jure A. uxoris ſuæ, quondam uxoris L.B. Armigeri filii præd' O.B. immediate poſt deceſſum præd' O.B. in præd' meſuagium ſive tenementum & cætera præmiſſa præd' cum pertin' abatavit, intravit, & intruſit ſuper poſſeſſionem Dom' Manerii præd', in exhæreditat' dicti Dom' Manerii præd' ſucceſſorum ſuorum, & contra conſuetudinem Manerii ſui præd' à tempore cujus contrarii memoria hominum non exiſtit in eodem Manerio uſitat' & approbat'; & exitus & proficua inde à tempore mortis præd' O. B. ad ſuum proprium uſum hucuſque habuit & percepit, non capiend.

præd'

di' meſuagium ſive tenementum & cætera præmiſſa præd' cum pertin' extra manus Domini Manerii præd', nec fecit inde Dom' finem pro eiſdem ſecundum Conſuetudinem Manerii ſui præd'. Et ſic præd' H. R. tenuit & occupavit prædict' meſuagium ſive tenementum & cætera præmiſſa præd' cum pertin' per præd' ſex annos ult' elapſos & amplius, contra Conſuetudinem Manerii prædicti. Ideo præceptum eſt Ballivo Manerii præd' ſeiſire in manus Domini præd' meſuagium ſive tenementum & cætera præmiſſa præd' cum pertin' quouſque, &c. Et Dominus modo habens inde ſeiſinam ad humilem petitionem præd' H. R. ex gratia ſua ſpeciali ad hanc Curiam conceſſit extra manus ſuas præd' meſuagium ſive tenementum & cætera præmiſſa prædicta cum pertin' præfat' H. R. & A. uxori ejus ad terminum vitæ ipſius A. Et liberata eſt eis ſeiſina per virgam, Habend' & tenend' præd' meſuagium ſive tenementum & cætera præmiſſa præd' cum pertin' præfat' H. R. & A. ad terminum vitæ ipſius A. ad voluntatem Domini ſecundum Conſuetudinem Manerii præd'; Et poſt deceſſum ipſius A. remanere inde quibuſdam D. T. &

& K. uxori ejus, Conſang' & proxime hæred' præd' O. B. videlicet filiæ præd' L. B. filii præd' O. B. & hæred' de corpore præd' D. T. legitime procreat'; Et pro defectu talis Exitus remanere inde præfat' K. uxori prædicti D. T. & hæred' de corpore præd' K. legitime procreat'; Et pro defectu talis Exitus remanere inde præfat' H.R. & hæred' de corpore prædicti H. R. legitime procreat'; Et pro defectu talis Exitus remanere inde præfat' A. uxori præd' B. R. & hæred' de corpore ejuſdem A. legitime procreat'; Et pro defectu talis Exitus remanere inde cuidam V. S. & hæred' ſuis imperpetuum, Tenend' de Domino per virgam ad voluntatem Domini ſecundum Conſuetudinem Manerii præd' per reddit' & ſervicia inde prius debit' & de jure conſuet'. Et tam præd' H.R. & A. uxor ejus quàm præd' D. T. & K. uxor jus dant Domino de fine pro tali ingreſſu ſuo inde habend' de & in præmiſſis octoginta ſolidos, fecerunt Dom' fidelitatem, & admſſi ſunt inde Tenentes modo & forma prædictis, &c.

Sur-

Surſumredditio tenementorum Cuſtomar' pro vita, Remanere in feodo, capt' per Seneſchallum extra Cur'.

Ad hanc Curiam teſtatum eſt per T.P. Seneſchall', quod primo die Januarii, Anno regni dicti Dom' Regis nunc duodecimo, A.L. gener' jacens in extremis ſurſumred' in manus Dom' per manus dicti Seneſchalli extra Cur' in præſentia S.D.S. R. & D. J. ſecundum conſuetud' Manerii præd' unum antiquum Cotagium ſive tenementum in quo J. C. modo inhabitat, triginta acras terræ, viginti & ſex acras prati, & quadraginta acras paſturæ cum pertin' in A. infra Manerium præd' vocat' *Alexanders Farm*, Ad opus & uſum J. uxoris ejuſdem A.L. pro termino vitæ ſuæ; Et poſt deceſſum ejuſdem J. Remanere inde C.L. & H.L. filiis natu minoribus præd' A.L. & hæred' ſuis. Proviſo tamen ſemper & ſub hac Conditione, quod ſi contingat aliquem præd' C. & H. obire ſine hæred' de corpore ſuo exeun', quod tunc ipſe qui ſupervixerit habebit & gaudebit præd' Cotagium ſive tenement' & cætera præmiſſa

præmiſſa præd' cum pertin' ſibi & hæredibus ſuis imperpetuum. Et ſuper hoc venit hic in Cur' præd' J. in propria perſona ſua, & petit ſe admitti ad Cottagium ſive tenement' & cætera præmiſſa præd' cum pertin'. Cui Dominus per Seneſchallum ſuum conceſſit inde per virgam ſeiſinam, Habend' ſibi in forma præd' ad voluntatem Dom' ſecundum Conſuetudinem Manerii præd'. Et dat Dom' de fine pro ingreſſu ſuo inde habend' quadraginta ſolid', fecit fidelitat', & admiſſus eſt inde tenens.

Simile capt' per Seneſchallum extra Cur' ad uſum viri & uxoris & hæred' de corpore viri, remanere hæred' uxoris in tallio, remanere viro preſentis tenentis pro vita in tallio, remanere preſentis tenentis pro vita in tallio, remanere in feodo.

Ad hanc Curiam teſtatum eſt etiam per præd' T. P. Seneſchallum ibidem, quod decimo die Februarii, Anno Regni dicti Dom' Regis nunc terciodecimo, T. J. venit coram præfat' Seneſch' in propria perſona ſua, & ſurſumreddidit in manus Domini per manus dicti Seneſchalli extra

tra Cur' in præſentia L.D. C. K. & J.T. ſecundum Conſuetud' Manerii præd' Reverſionem unius meſuagii ſive tenementi, ſexdecim acrarum terræ, duodecim acrarum prati, & tredecim acrar' paſturæ cum pertin' vocat' *Dillinghams Farme*, ac Reverſionem duorum Cottagiorum, octodecim acrarum prati, & quatuordecim acrarum paſturæ cum pertin' in H. infra parochiam de A. Ad opus & uſum D.T. & K. uxoris ejus & hæred' de corpore præd' T. legitime procreat' cum poſt mortem cujuſdam A. modo uxoris H.J. acciderint: Et pro defectu talis Exitus de corpore præd' D. T. legitime procreat' remanere inde præfat' K. uxori præfat' D. & hæred' de corpore ejuſdem A legitime procreat'; Et pro defectu talis Exitus remanere inde præfat' H.J. & hæred' de corpore ſuo legit me procreat'; Et pro defectu talis Exitus remanere inde præfat' A. uxori præd' H. J. & hæred' de corpore ejuſdem A. ligitime procreat'; Et pro defectu talis Exitus remanere inde V.S. & hæred' ſuis imperpetuum. Quibus quidem D. T. & K. uxori ejus Dominus per Seneſchallum ſuum præd' ad hanc Cur' conceſſit inde per virgam ſeiſinam, Habend'

&

& tenend' præd' meſuagium, Cotagia & cætera præmiſſa præd' cum pertin' in Reverſione ſecundum Conſuetud' Manerii præd', cum poſt mortem præd' A. uxoris præd' H.J. accederint, præfat' D. & K. uxori ejus & hæred' de corpore præd' D. ligitime procreat'; Et pro defectu talis Exitus remanere inde præfat' K. uxori præfat' D. & hæred' de corpore ejuſdem K. legitime procreat'; Et pro defectu talis Exitus remanere inde præfat' H.J. & hæred' de corpore ſuo legitime procreat'; Et pro defectu talis Exitus remanere inde præfat' A. uxori præd' H.J. & hæred' de corpore ejuſdem A. ligitime procreat'; Et pro defectu talis Exitus remanere inde V. S. & hæred' ſuis imperpetuum ad voluntatem Dom' ſecundum conſuetudinem Manerii præd' per reddit' & ſervicia inde prius debit' & de jure conſuet'. Et præd' D. & K. uxor ejus dant Dom' de fine pro tali ſtatu ſuo inde habend' centum ſolidos, & admiſſi ſunt inde tenentes modo & forma præd'. Et præd' Dom' cognoſcit ſe ſatisfact' de præd' fine inde habend' pro meſuagio, cotagiis & cæteris præmiſſis præd' cum pertinencils de præd' D. & K. uxore ejus cum præd'

meſuagium, cottagia & cætera præmiſſa præd' cum pertinenciis poſt mortem præd' A. uxoris præd' H. J. ad manus ſuas devenerint. Et poſtea ad hanc Cur' venit præd' T. J. in propria perſona ſua, & hic in plena Curia ſurſumreddidit in manus Domini tota jus, titulum, clameum & intereſſe ſua in omnibus præd' meſuagio, cottagiis & cæteris præmiſſis cum pertinenciis ad uſus præd'. Et ulterius remiſit, relaxavit, & omnino pro ſe & hæredibus ſuis quietum clamavit præfat' H. J. & A. uxori ejus tota jus, titulum, clameum, intereſſe & demand' ſua quæ ipſe præd' T. J. unquam habuit in præd' meſuagio cottagiis & cæteris præmiſſis præd' cum pertinenciis, Habend' & tenend' omnia & ſing' præd' meſuagium, cottagia & cætera præmiſſa præd cum pertinenciis præfat' H. J. & A. uxori ejus pro termino vitæ præd' A. & poſt deceſſum ejuſdem A remanere omnium præd' terrar' & tenementorum cum pertinenciis præfat' D. T. & K. uxori ejus & hæred' de corpore præd' D. legitime procreat'; & pro defectu talis Exitus remanere inde præfatæ K. uxori præd' D. & hæred' de corpore ejuſdem K. legitime procreat'; Et pro

defectu

defectu talis Exitus remanere inde præfat' H. J. & hæred' de corpore præd' H. J. legitime procreat'; Et pro defectu talis Exitus remanere inde præfat' A. uxori præd' H. J. & hæred' de corpore ejusdem A. legitime procreat'; Et pro defectu talis Exitus remanere inde præfat' V. S. & hæred' suis imperpetuum ad voluntatem Domini secundum Consuetudinem Manerii prædicti, &c.

Presentamentum de morte Cohæredis ubi tenementa customar' descend' unico fratri & hæredi.

Compertum est etiam per Homagium ibidem, quod T. S. qui tenuit sibi & hæred' suis de Dom' hujus Manerii secundum Consuetud' Manerii præd' unum mesuagium sive tenementum, duo cottagia, tria Tofta, unum Columbare, unum Gardinum, duo Pomaria, quinquaginta acras terræ, viginti acras prati, octoginta & septem acras pasturæ, centum acras bosci, ducentas acras Jampnor' & bruere, & sexaginta acras Mariſci cum pertin' in A. ante hanc Cur' obiit inde seisitus. Et quod H. S. est unicus frater & hæres proximus præd' T. S. & plenæ ætatis,

qui præſens hic in Cur' petit ſe admitti tenentem ad omnia terras & tenementa Cuſtomaria de quibus ipſe præd' T. S. obiit inde ſeiſitus, videlicet ad præd' meſuagium, cotagia, terras, tenementa, & cætera prætmiſſa præd' cum pertin' in A. præd' infra Manerium præd'. Cui quidem H.S. Dominus per Seneſchallum ſuum præd' conceſſit inde per virgam ſeiſinam, Habend' & tenend' ſibi & hæred' ſuis, Tenend' de Domino per virgam ad voluntatem Domini ſecundum Conſuetudinem Manerii præd' per reddit' & ſervicia inde prius debit' & de jure conſuet'. Et dat Domino de fine pro Ingreſſu ſuo inde habend' decem libras, & fecit Domino fidelitatem, & admiſſus eſt inde tenens.

Similis diſcenſus filio & hæredi de terris cuſtomar' tent' in Coparcenerio.

Compertum eſt etiam per homagium ibidem, quod quidam H.B. qui tenuit de Dom' hujus Manerii ut Parcenerius ſecundum Conſuetudinem Manerii præd' tria meſuagia, tria Cotagia, ſexaginta acras terræ, ſeptuaginta prati, & centum

&

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THE

& quinquaginta acras pasturæ cum pertin' in A. Infra Manerium præd' simul cum J.B. fratre suo, sibi hæred' suis, obiit citra ult' Cur' inde seisit'. Et quod quidam L.B. est ejus filius & proximus heres quoad medietat' præd' messuagiorum, Cotagiorum, terrarum & tenementorum præd' cum pertin', & plenæ ætatis; qui præsens hic in Cur' petit se admitti tenentem ad præd' medietatem præd' terrarum & tenementorum cum pertinenciis. Cui quidem L. B. Dominus per Seneschallum suum præd' concessit inde per virgam seisinam, Habend' & tenend' sibi & hæred' suis in Coparcenerio cum præfat' J.B. Tenend' de Domino per virgam ad voluntatem Domini secundum consuetudinem Manerii præd' per reddit' & servicia inde prius debit' & de jure consuet'. Et dat Domino de fine pro ingressu suo inde habend' quadraginta solidos, & fecit Domino fidelitatem, & admissus est inde tenens.

Sursumredditio in Curia per Seneschallum.

Ad hanc Curiam venit A. B. unus Customar' tenent' hujus Manerii in propria per-

persona sua, & sursumreddidit in manus Dom' per manus Seneschalli sui præd' unum Cottagium cum pertinenciis vocat' *Sledens*, ac duodecim acras terræ jacen' in communi Campo de A. præd' vocat' le *Marsh field*, videlicet unam acram inde super stadio ibidem vocat' *Carters Furlong*, inter terras Georgii Cambridge ex orientali parte, & terras Willielmi Johnson ex occidentali parte ibidem, & abuttan' super terram Capitalem vocat' *A Headland* cujusdam Johannis Ingersole ibidem ex parte australi; quatuor selliones inde (per æstimat' unam acram) jacen' super stadio ibidem vocat' *Websters Furlong*, inter terras Willielmi Wilson generosi ex parte australi, & terras Josephi Tiler ex parte boreali ibidem, & abuttan' super communem viam ibidem ex parte orientali inde; duas acras inde jacen' super eodem stadio vocat' *Websters Furlong*, juxta terras pertinen' Collegio vocat' *Caius College* in Cantabrigia ex parte boreali, & abuttan' super dictam commun' viam ibid' ex parte orientali inde; duas rodas inde jacen' super stadio ibidem vocat' *Long Furlong*, inter terras Manilii Willoughby generosi ex parte orientali, & terras prehonorabilis Edw.

Com-

Comitis Clarendon ex parte occidentali, & abuttan' ſuper Rivolum ibidem vocat' *Stareden Brook* ex parte boreali inde; tres rodas inde jacen' ſuper dicto ſtadio vocat' *Long Furlong*, inter terras Johannis Jordan Armigeri ex parte orientali, & terras Henrici Godfrey Militis ex parte occidentali, & abuttan' ſuper dictum Rivolum ibid' vocat' *Stareden Brook* ex parte boreali inde; tres alias rodas inde jacen' ſuper dicto ſtadio vocat' *Long Furlong*, inter terras Roberti Baker generoſi ex parte occidentali, & terras Willielmi Arter ex parte orientali inde, & abuttan' ſuper dictum Rivolum ibidem vocat' *Stareden Brook* ex parte boreali inde; ſex ſeliones inde (per æſtimationem unam acram & dimidium unius acræ) jacen' ſuper ſtadio ibid' vocat' *Church Furlong*, inter terras Roberti Jaſon Baronetti ex parte auſtrali, & terras modo Dom' hujus Manerii ex parte boreali, & abuttan' ſuper Cœmeterium Eccleſiæ parochialis de A. ex parte orientali inde; ſex alias ſeliones inde (continen' per æſtimationem unam acram & dimidium unius acræ) jacen' ſuper eodem ſtadio vocat' *Church Furlong*, inter terras Suſannæ Carter viduæ ex parte boreali, & terras Hugo-

Hugonis Claver generosi ex parte australi, & abuttan' super præd' Cœmeterium Ecclesiæ parochialis de A. præd' ex parte orientali inde; dimidium unius acræ inde existens Caput, vocat' *the Headland*, ejusd' stadii vocat' *the Church Furlong*; unum aliud dimidium unius acræ inde jacen' super stadio vocat' *the Hill Furlong*, inter terras prænobilis Georgii Ducis Bukinghamiæ ex parte orientali, & terras pertin' Magistro, Sociis & Scholaribus Collegii Sancti Johannis in Cantabrigia ex parte orientali, & abuttan' super quasdam terras ibidem vocat' *Stirchleys Heydons* ex parte australi inde; unum aliud dimidum unius acræ inde jacens super eodem stadio vocat' *the Hill Furlong*, inter terras Georgii Mountague generosi ex parte orientali inde, & terras dicti modo Dom' ejusdem Manerii ex parte occidentali, & abuttan' super dictas terras ibidem vocat' *Stirchleys Heydons* ex parte australi inde; duas rodas inde jacen' super stadio ibidem vocat' *Dirty Furlong*, inter terras Johannis Whitby Armigeri ex parte meridionali, & terras Ambrosii Gregory generosi ex parte septentrionali, & abuttan' super magnum Boscum vocat' *Gayers Wood* ex parte occi-

occidentali inde; duas alias rodas inde jacen' ſuper dicto ſtadio vocat' *Dirty Furlong*, inter terras Jacobi Scott ex parte ſeptentrionali, & terras Dioniſii Antrobus generoſi ex parte meridionali, & abuttan' ſuper dict' Boſcum vocat' *Gayers Wood* ex parte occidentali inde: Ad opus & uſum Johannis Rider, hæred' & aſſign' ſuorum imperpetuum. Cui quidem Johanni Rider Dom' per Seneſchallum ſuum conceſſit inde ſeiſinam per virgam, Habend' ſibi & hæred' ſuis, Tenend' de Dom' per virg' ad voluntat' Dom' ſecundum conſuet' Manerii præd' per reddit' & ſervicia inde prius debit' & de jure conſuet'. Et dat Dom' de fine pro ingreſſu ſuo inde habend' viginti ſex ſolid' & octo denar', fecit fidelitatem, & admiſſus eſt inde tenens.

Copia Rotuli Curiæ, ſive extract' ſurſumreddition' è rotulis Cur'.

Manerium de A. C. cum Membris.

ff. AD Curiam Baronis J. P. Militis, Domini Manerii præd', ibidem tent' die Lunæ primo die Septembris, Anno Domini milleſimo ſexcenteſimo ſexageſimo tertio, annoque Regni Domini noſtri Carolli Secundi, Dei gratia, An-

Angl æ, Scotiæ, Franciæ & Hiberniæ Regis, fidei Defensoris, &c. tertiodecimo, coram Francisco Wyat Armigero, Seneschallo ibidem, Irrotulatur sic.

Ad hanc Curiam venit L.C. unus Customar' tenen' hujus Manerii in propria persona sua, & sursumreddit in manus Domini per manus Seneschalli sui præd' secundum Consuetud' Manerii prædicti unum messuagium sive tenementum & triginta acras prati & pasturæ cum pertin' in A. præd' infra Manerium præd', Ad opus & usum J. C. hæred' & assign' suorum imperpetuum. Cui Dominus per Seneschallum concessit inde per virgam seisinam, Habend' sibi & hæredibus suis, Tenend' de Domino per virgam ad voluntatem Domini secundum Consuetudinem Manerii præd' per reddit' & servicia inde prius debit' & de jure consuet'. Et dat Dom' de fine pro ingressu suo inde habend' quinquaginta solid', fecit fidelitat', & admissus est inde Tenens.

FINIS.

UMI